

1           A.    I probably try to be very careful when I'm  
2           printing such a large job.

3           Q.    Let me ask you this:  You also said that  
4           Professor Martinez gave an assignment or asked a junior  
5           faculty member to print something for her?

6           A.    An adjunct faculty member.

7           Q.    Do you know what it was?

8           A.    It was some type of a handout.  But, keep in  
9           mind, the President's directive, Joe Sueyoshi, was to  
10          approve all of her print jobs.

11          Q.    How do you know it was a handout?  Did you ask  
12          her?

13          A.    I think somebody gave me a copy of it.  Joe  
14          did.

15          Q.    Now, I'm going to ask you the questions again.  
16          How do you know it was a handout?  Did you ask Professor  
17          Martinez?

18          A.    No.  I was working with Dr. Sueyoshi, he was  
19          our contact and my contact for this.

20          Q.    Okay.  Thank you.

21                  Now I got a question, it's about the Staples'  
22          stuff.  You say that violated a rule.  Is that your  
23          belief, that cash-handling rule?

24          A.    Well, first of all, all of the print jobs were  
25          to be approved by Mr. Sueyoshi that Dr. Martinez printed

1 was to be approved -- this is a directive from the  
2 President -- and he's supposed to have been given  
3 two-day's notice.

4 Q. Okay.

5 A. In addition, from my understanding the person  
6 that wrote the materials was also supposed to be giving  
7 a permission and he did not give permission to have them  
8 printed and bound, and certainly not sold to the  
9 students.

10 Q. Okay. Let me ask a question now. Okay, are  
11 you aware that Joe Sueyoshi approved every item to be --  
12 in that -- in that little booklet to be printed by the  
13 university separately?

14 MS. BLACH: Objection.

15 MR. MONTROYA: Are you aware of that?

16 MS. BLACH: Objection. That's not a question.  
17 That's a speech.

18 Q. BY MR. MONTROYA: Are you aware of that?

19 A. Say it again because I didn't quite follow your  
20 logic.

21 Q. I'll say it again. Are you aware that Joe  
22 Sueyoshi appeared -- approved separately every item  
23 collected in that handout to be printed at PC's Icon  
24 copy center separately? Are you aware of that? Yes or  
25 no?

1           A.    I know that the materials that were created by  
2           the faculty member was -- they were approved by the Math  
3           Department's Committee that approves the materials that  
4           can be used in the Math Department.

5           Q.    Are you aware that Professor Martinez also told  
6           her students: Hey, you guys want to borrow this and  
7           make your own copies, go for it; are you aware of that?

8           A.    No.

9           Q.    Okay. Are you aware that the students said:  
10          Hey, no, I don't want to go to Kinkos and waste my time,  
11          you go copy it; are you aware of that?

12          A.    No.

13          Q.    Are you aware that Professor Martinez even lost  
14          money on the deal?

15               MS. BLACH: Objection. These are not --

16               THE WITNESS: No.

17               MS. BLACH: -- questions.

18          MR. MONTROYA: That's a question. Do you know  
19          whether or not Professor Martinez lost money on the  
20          deal?

21               MS. BLACH: These are facts not in evidence.

22          MR. MONTROYA: I'm trying to get evidence. I'm  
23          asking her what she knows.

24               CHAIRPERSON CRUDUP: You can answer the  
25          question.

1 THE WITNESS: I don't. I don't know.

2 Q. BY MR. MONTTOYA: Now, you said that violated  
3 one of the District's rules regarding cash handling,  
4 right? Is that what you said?

5 A. There are cash-handling rules and regulations.

6 Q. Now, you tell the Committee what that rule is.  
7 What's the name of the rule?

8 A. It's cash-handling procedure.

9 Q. What number is it?

10 A. I don't know the number.

11 Q. Tell the Committee what that rules says.

12 A. One of the --

13 Q. Because I have it right in front of me.

14 A. Why don't you read it?

15 Q. Because you're the one who's testifying, not  
16 me. When I say things, I get shouted down for allegedly  
17 testifying. So, tell the Committee what the rule says,  
18 please. You're the one who said she violated it.

19 CHAIRPERSON CRUDUP: Let the witness answer.

20 MR. MONTTOYA: Yes.

21 THE WITNESS: It's standard policy in the  
22 Governing Boards. I think you must be all aware of it,  
23 as well, that you must go through training. There's a  
24 process that you must follow in order to handle cash and  
25 there's several different items that describe that and

1 describe that process.

2 Q. BY MR. MONTTOYA: Is that everything you know  
3 about that rule to tell the Committee?

4 A. That pretty much sums it up. I know there's  
5 training and process and procedure you must go through  
6 before you are allowed to handle cash at Maricopa  
7 Community College District.

8 Q. Are you aware of the difference between selling  
9 something as opposed to seeking reimbursement for a cost  
10 that you have incurred on somebody else's behalf?

11 A. In my opinion, a transaction was made and  
12 students received a product, a good, after they gave \$11  
13 to Dr. Martinez.

14 Q. Thank you for that statement, but now answer my  
15 question.

16 A. What was it again? Because, I'm following the  
17 logic.

18 Q. I'll tell you. And I don't mean to be harsh  
19 with you, but I'm looking at the clock, I'm under a lot  
20 of time pressure.

21 Are you aware of the difference between going  
22 to Starbucks and buying a cup of coffee and reimbursing  
23 your friend who went to Starbucks for you and bought a  
24 cup of coffee? Are you aware of that difference?

25 A. I mean, I guess. Sure. Why not.

1 MR. MONTOKA: Okay. I don't have any further  
2 questions of this witness. Thank you so much, Dr.  
3 Kakar.

4 THE WITNESS: Thank you.

5 MS. BLACH: I have a couple.

6 DR. REYES: Mr. Chairman, I have a follow-up  
7 question, please. You said that all the materials that  
8 were included -- Mr. Montoya, you asked the question --  
9 if all the materials in the packet had previously been  
10 approved by the Department Chair, could you explain that  
11 further? If the packet had been previously  
12 independently approved?

13 THE WITNESS: Yes. The Math Department has a  
14 process where if a faculty member creates their own  
15 materials, they actually review it and as a department  
16 decide if those materials can be used in the classroom.  
17 In this case, I think the professor, Tim Bryan, he  
18 doesn't have his printed, he has it all electronic. But  
19 he has been using those materials for a number of years.  
20 I mean, he has created those materials on his own.

21 And so Dr. Martinez had asked if she could use  
22 his materials that particular semester; he said yes. He  
23 did not, however, agree to have her print the materials.  
24 He had no idea that she was going to print the materials  
25 or that she was going to collect \$11 from each student.

1 CHAIRPERSON CRUDUP: I have a quick question.

2 THE WITNESS: And there is an e-mail in the  
3 materials of his -- of his words to that effect.

4 CHAIRPERSON CRUDUP: I have a quick question  
5 for Mr. Montoya.

6 MR. MONTOKYA: Yes, sir.

7 CHAIRPERSON CRUDUP: You mentioned Dr. Martinez  
8 was trying to get ahold of Lee Combs and another counsel  
9 with District, do you have any documentation of e-mails  
10 or something?

11 MR. MONTOKYA: Yes, we do. And I will ask  
12 Professor Martinez regarding that when I present my  
13 defense to these charges, because she repeatedly asked  
14 and they told her no. And when -- and when they didn't  
15 tell her no, like I said to you in my hearing  
16 memorandum, they gave her false information.

17 CHAIRPERSON CRUDUP: Thank you.

18 DR. CAIRE: I have one question. In Exhibit 25  
19 it was suggesting Cleopatria Martinez published this  
20 stuff on Blackboard. What's the difference between  
21 putting this stuff on Blackboard and making Xerox  
22 copies?

23 THE WITNESS: We were trying to give her some  
24 options as to how she could maybe get the materials to  
25 the students, and Blackboard at the time was our

1 learning course management system. It's now changed to  
2 Canvas.

3 MS. BLACH: I have just a couple of follow-up  
4 questions.

5  
6 REDIRECT EXAMINATION

7  
8 BY MS. BLACH:

9 Q. Dr. Kakar, this e-mail that the Committee just  
10 asked you about, what is the date on that e-mail?

11 A. January 28th, 2010.

12 Q. Was that before the directives were put in  
13 place limiting her copy restrictions?

14 A. Yes.

15 Q. So, that recommendation was made before her  
16 copy privileges were revoked?

17 A. Yes. After -- after this meeting her -- well,  
18 yeah, that's the case.

19 Q. And then one final question. With respect to  
20 the Tim Bryan materials that are the subject of the  
21 cash-handling violation. Isn't it true that Dr.  
22 Martinez actually modified these materials before she  
23 distributed them to students?

24 A. I -- I can't answer that.

25 CHAIRPERSON CRUDUP: Five minutes left.

1 MS. BLACH: Finished with the witness.

2 MR. UPPAL: I'd like to call my next witness.

3 MR. MONTOYA: Five minutes left of their whole  
4 case? That is our view.

5 MR. UPPAL: I'd like to call my witness now.  
6 I'd like to call President Anna Solley.

7

8 ANNA SOLLEY,

9 called as a witness herein, having been first duly  
10 sworn, was examined and testified as follows:

11

12 DIRECT EXAMINATION

13

14 BY MR. UPPAL:

15 Q. Good afternoon, Dr. Solley. Could you please  
16 tell the Committee what position you hold with MCCCC?

17 A. Yes. I'm President of Phoenix College.

18 Q. And if there is a problem or a headache or an  
19 insubordinate employee who doesn't follow the law,  
20 doesn't follow directives, whose desk does it ultimately  
21 land on at Phoenix College?

22 A. It is my responsibility. I serve as the CEO of  
23 the college and I'm responsible for all the operations  
24 of the institution. So, any issue that affects an  
25 employee, that affects a student, that affects budget,

1 any challenges that we face are ultimately my  
2 responsibility.

3 Q. So, there's this phrase, and tell me if it's  
4 accurate, does the buck stop with you?

5 A. Absolutely.

6 Q. And if there's a headache, it's your headache?

7 A. Absolutely.

8 Q. So, in your own words, Dr. Solley, would you  
9 please tell the Committee, face them and tell them why  
10 you are recommending Dr. Cleopatria Martinez for  
11 termination?

12 A. Committee Members, I am recommending that Dr.  
13 Martinez be terminated for several reasons. One  
14 certainly deals with the infringement of copyright and  
15 fair use violations; in addition to that, repeated  
16 attempts to not follow the Governing Board policies and  
17 procedures; in addition to that, repeated attempts not  
18 to follow my directives, my directions; and not just my  
19 directions, but the directions and advice of our staff  
20 and our faculty and her Chair; and then, of course,  
21 another issue has to do with the most recent situation  
22 in regards to violation of the Cash-Handling Policy.

23 And then also because we are very concerned  
24 about potential liability, this morning's expert  
25 witness, Sean Garrison, talked in detail about some of

1 the potential threats, not only to our college but he  
2 gave examples of previous situations where there had  
3 been losses and we're very concerned about that because  
4 we do have limited resources. We're good stewards of  
5 the public resources and we want to ensure that those  
6 resources are deployed for the right purpose, to promote  
7 and support student's success, to promote and support  
8 teaching and learning, and not to put us in the  
9 defensive posture of defending a very expensive  
10 lawsuits.

11 Q. So, if a lawsuit had resulted as a result of  
12 Dr. Martinez's copyright violations or her attempts to  
13 evade the limitations that were placed on her, as a  
14 result of those copyright violations all that money and  
15 all those damages that Mr. Garrison testified about,  
16 where would that money come from? Who would pay the  
17 attorney's fees? Who would pay the damages?

18 A. Those funds would come from my college. And we  
19 are experiencing some budget challenges, not just my  
20 college but in the system. We have lost some  
21 considerable funding from the State, and as a result of  
22 that, that would mean that rather than hiring faculty  
23 and staff or providing support for very specific  
24 programs that would support student success, we would  
25 have to use those resources in turn to defend our

1 colleagues against these lawsuits.

2 Q. So, instead of spending the money for students,  
3 you have to spend it fighting a lawsuit?

4 A. That is correct.

5 Q. And what about with respect to the complaints  
6 that you've received from students that they couldn't  
7 even get receipts from Dr. Martinez after she sold them  
8 packets of materials, how does that impact your request  
9 for termination?

10 A. That is an indication of willful and  
11 intentional behavior on behalf of Dr. Martinez, because  
12 it demonstrates that she is not willing to follow  
13 directives, she was not willing to follow instructions.  
14 And we have been working with Dr. Martinez for the last  
15 four years. We've met with her, we've counselled her,  
16 we've advised her.

17 And, again, the latest indication is that she's  
18 not going to change her behavior and she's going to put  
19 us in a very precarious situation and it's really  
20 beginning to affect students. And if anybody knows  
21 anything about me, I stand for -- I'm a person of  
22 integrity; I stand for excellence. I want our students  
23 to have the best because they deserve the best.

24 CHAIRPERSON CRUDUP: Okay. One last question.

25 MR. UPPAL: Okay. If the Committee would

1           indulge me, I would like one final question.

2                   MR. MONTOKYA: What about my turn?

3                   MR. UPPAL: I said one final question, Mr.  
4 Montoya.

5                   CHAIRPERSON CRUDUP: One question.

6           Q. BY MR. UPPAL: Do you have any final comment  
7 that you would like to make to the Committee with  
8 respect to your level of trust in Ms. Martinez [sic] and  
9 what you would like the Committee to do or not do?

10                  MR. MONTOKYA: Object to him asking an  
11 open-ended question when his time is already expired.  
12 And he's been repeatedly warned by the Committee that  
13 you are going to hold him to his time so that he would  
14 expend it wisely.

15                  MR. UPPAL: Mr. Chairperson, how many minutes  
16 has Mr. Montoya used making speeches and objections,  
17 these same objections over and over and over. That time  
18 should come back to me.

19                  MR. MONTOKYA: If he wouldn't completely --

20                  CHAIRPERSON CRUDUP: Just one minute.

21                  MR. MONTOKYA: -- do the same thing over and  
22 over --

23                  MR. UPPAL: One question. One minute.

24                  MR. MONTOKYA: -- I wouldn't have to do that.

25                  CHAIRPERSON CRUDUP: You may proceed.

1           Q.    BY MR. UPPAL:  So the question was, which the  
2           Committee Chairperson has just allowed you to answer is:  
3           Could you please tell the Committee in your own words  
4           what level of trust you have in Dr. Martinez to follow  
5           the law, follow the directives, follow orders that you  
6           have received [sic], and what you would like -- or what  
7           your request is of the Committee in this matter?

8           A.    I do not trust that Dr. Martinez would comply  
9           with our directive; I do not trust that she will follow  
10          the law; I do not trust she will abide by Governing  
11          Board policies and procedures.  I respectfully request  
12          that the Committee recommend to our Chancellor -- or,  
13          the Governing Board, excuse me, termination as per my  
14          request, my recommendation.

15               CHAIRPERSON CRUDUP:  Okay.  Thank you.

16  
17                               CROSS-EXAMINATION

18  
19           BY MR. MONTOYA:

20           Q.    You believe that Professor Martinez violated  
21           copyright law, right?

22           A.    Yes.

23           Q.    But that's not your independent conclusion, is  
24           it?  Because you're not a copyright law expert, right?

25           A.    It is not my independent conclusion but we did

1 hire --

2 Q. Okay. You answered the question.

3 A. Let me answer.

4 MR. UPPAL: Objection.

5 THE WITNESS: Can you let me answer?

6 MR. UPPAL: Objection. Here we go again.

7 MR. MONTTOYA: Can I say something?

8 MR. UPPAL: When Mr. Montoya does not like the  
9 answer he engages in misconduct.

10 MR. MONTTOYA: I don't want a speech to hand her  
11 the answer.

12 MR. UPPAL: No, he's not --

13 MR. MONTTOYA: Your lawyers -- your lawyers will  
14 tell you that judges have the right to direct witnesses  
15 to be responsive then to tell them to stop with a speech  
16 that's not responsive. She's -- she's had her  
17 opportunity to give speeches, Lord knows. All I want  
18 her to do is answer my question so I can move on so I  
19 can get to my case.

20 MR. UPPAL: This is the President of Phoenix  
21 College, the person on whom this entire headache lands  
22 and --

23 MR. MONTTOYA: And why didn't you call her  
24 earlier?

25 MR. UPPAL: He is cutting off her question

1 [sic]. I'm not -- this is completely inappropriate. He  
2 asked a question. Now he was getting a response which  
3 he didn't like which undermines his client's position,  
4 and he's trying not to -- he's trying to hide the answer  
5 from you. He can't ask a question and cut the witness  
6 off.

7 CHAIRPERSON CRUDUP: Rephrase the question.

8 MR. MONTOYA: Okay.

9 CHAIRPERSON CRUDUP: You may answer.

10 Q. BY MR. MONTOYA: Okay. Your claim that  
11 Professor Martinez has violated the copyright laws is  
12 based upon opinions that you received from individuals  
13 that you believe to be legal experts, correct?

14 A. It is correct.

15 Q. Thank you. Budget -- you have budget problems?

16 A. Yes.

17 Q. And you don't want to pay lawyers, right?

18 A. Well, my con- --

19 Q. Is that yes --

20 MR. UPPAL: Objection.

21 Q. BY MR. MONTOYA: -- or no?

22 A. My --

23 MR. UPPAL: Here we go again. There is a  
24 question, she's about to answer it, he doesn't like  
25 what's coming in the answer and asks another question.

1 Mr. Crudup, this is completely outrageous.

2 MR. MONTTOYA: No, it's not.

3 DR. CAIRE: Can you give her at least a few  
4 seconds before you interject again, so we can hear --

5 MR. MONTTOYA: Well, wait a minute. Can I --

6 MR. UPPAL: You just received an instruction.  
7 You're actually arguing with an instruction?

8 MR. MONTTOYA: No.

9 MR. UPPAL: So, can we continue and let her  
10 answer?

11 MR. MONTTOYA: Well, I'm not going to answer you  
12 and you can --

13 CHAIRPERSON CRUDUP: Rephrase the question.  
14 Let her answer.

15 MR. UPPAL: Well, Dr. Crudup, on this one  
16 that's fine. We're going to defer to you. But I don't  
17 want a series of him interrupting the President of  
18 Phoenix College when he doesn't like an answer and then  
19 he gets a second shot at rephrasing the question and  
20 deprives the witness of a chance to answer. This is the  
21 second time he's gotten this. It's an old lawyer's  
22 trick. It shouldn't be allowed to continue.

23 DR. REYES: Mr. Chairman, may I? I'd just like  
24 to advise everyone of the time. We do want to honor  
25 equal -- as close as possible amounts of time for both

1 the sides. So, whatever additional time we take right  
2 now, we're going to need to adjust closing statements.  
3 We have very little buffer at the end of day before 5  
4 o'clock adjournment.

5 MR. MONTTOYA: I'm going to be mindful and move  
6 on to something else.

7 DR. REYES: Then it will be your turn.

8 Q. BY MR. MONTTOYA: Okay. You claimed that  
9 Professor Martinez violated a cash-handling rule?

10 A. Yes, I do.

11 Q. Okay. Which one?

12 A. It's Governing Board -- it's one of our  
13 administrative regulations.

14 Q. Which one?

15 A. I don't know off the top of my head the exact  
16 number.

17 Q. Okay. Do you know its content?

18 A. Yes, I do know it's content.

19 MR. MONTTOYA: Wait. Excuse me. Now he just  
20 handed her the answer.

21 MR. UPPAL: We handed her the charges.

22 MR. MONTTOYA: Excuse me. And I want you to  
23 please seek advice from counsel. You can't hand the  
24 witness the answer when she's being cross-examined.  
25 That is improper.

1 MR. UPPAL: He's trying to get her to state the  
2 rule of a Cash-Handling Policy without her taking a look  
3 at it. You can take a look at it right here. I've  
4 circled it. It's the statement of charges.

5 MR. CALDERON: Mr. Chairman, with your  
6 permission may I retrieve the paper?

7 MS. BLACH: Statement of Charges.

8 MR. CALDERON: With your permission, Mr. Chair.  
9 Mr. Montoya, this is what was handed.

10 MR. MONTOYA: Yeah. And I don't want her --

11 MR. CALDERON: This isn't asking you anything.  
12 Just so you can see it, what was handed.

13 MR. MONTOYA: Okay. I see it.

14 MR. CALDERON: And there's a bracket.

15 MR. MONTOYA: I'll hand it back to you, sir.

16 MR. CALDERON: All right. For the benefit of  
17 the Committee, this is what was handed to the witness  
18 during the testimony. And Mr. Chairman, I would  
19 recommend that you admonish all the parties not to hand  
20 the witness anything while they're testifying.

21 CHAIRPERSON CRUDUP: Okay. Do not hand the  
22 witness anything while they're testifying.

23 MR. UPPAL: Fair enough. My request is if he's  
24 going to ask about a rule, then the witness should be  
25 able to look at the rule that she's being questioned

1 about.

2 MR. MONTTOYA: My response is when you're trying  
3 to fire somebody, you should at least know the rule that  
4 you claim they violated off the top of your head,  
5 because you owe that to someone when you're trying to  
6 deprive them of their career and employment. It's not  
7 that hard to do. Believe me. I did it and I don't work  
8 for Phoenix College.

9 Q. BY MR. MONTTOYA: President Solley, what's the  
10 rule say that you claim my client violated and that you  
11 want to fire her for?

12 MR. UPPAL: Objection. We'll stipulate she  
13 doesn't have it memorized. He's asked a question. Now,  
14 may I hand her the rule so she can answer the question?

15 MR. MONTTOYA: I object. This is part of my  
16 cross-examination.

17 DR. REYES: Mr. Chairman, may I? I'm sorry but  
18 I don't believe we need to have all rules memorized. I  
19 believe we teach our students and know how to use the  
20 resources.

21 MR. MONTTOYA: That's right. That's why I just  
22 asked her what it said. And I -- and she hasn't  
23 answered that yet.

24 MR. UPPAL: May I hand her the rule?

25 Q. BY MR. MONTTOYA: I know you don't have it

1 memorized --

2 MR. UPPAL: This is a request. May I hand her  
3 the rule? She's being --

4 MR. MONTTOYA: Well, you were just ordered that  
5 that not to be done.

6 MR. UPPAL: I just asked, Mr. Montoya.

7 MR. MONTTOYA: Well, he's --

8 MR. UPPAL: No.

9 MR. MONTTOYA: I heard him order that they are  
10 not to --

11 MR. CALDERON: Mr. Chair, may I ask a question?

12 CHAIRPERSON CRUDUP: Yes.

13 MR. CALDERON: Mr. Montoya, what are you trying  
14 to -- what's your end?

15 MR. MONTTOYA: I just want -- I agree with you  
16 that you don't need to memorize a rule. However, you  
17 should know it's substance. And all I'm asking her is  
18 what is the substance of the rule.

19 CHAIRPERSON CRUDUP: She has already stated the  
20 substance earlier when she's being questioned. She  
21 stated the basic substance of it, the relationship  
22 between -- between the faculty and the students. She  
23 knows what -- what it refers to, so you can ask her  
24 again what it refers to.

25 MR. UPPAL: Dr. Crudup, I thought you just

1 ruled -- I thought I heard a yes from you that I could  
2 hand her the rule. You were about to pass it to me.

3 MR. MONTOYA: I'll make this easy. I'll  
4 withdraw the question and I'm done questioning this  
5 witness. Thank you.

6 And as long as there's no redirect, it's  
7 already 1:35.

8 MR. CALDERON: He withdrew the question, so  
9 let's move on.

10 DR. REYES: Mr. Chairman, may I?

11 CHAIRPERSON CRUDUP: Sure.

12 DR. REYES: For procedural purposes as we move  
13 ahead, if there is anything that either of you would  
14 like to hand the witness, if you could please ask  
15 permission first without handing. That way we're still  
16 consistent with what Mr. Chair said.

17 MR. MONTOYA: That's my understanding of the  
18 proper procedure and that's what I would follow.

19 Thank you, President Solley.

20 THE WITNESS: You're welcome.

21 MR. UPPAL: No redirect.

22 My request would be that if we could take a  
23 two-minute break and five-minute break before Mr.  
24 Montoya begins the defense. I would appreciate it.  
25 Just as a matter of courtesy.

1 CHAIRPERSON CRUDUP: Okay.

2 MR. MONTROYA: Sure.

3 CHAIRPERSON CRUDUP: We're at recess.

4 (Whereupon a recess is taken at 1:34 p.m. until  
5 1:40 p.m.)

6  
7 MR. MONTROYA: May I proceed?

8 CHAIRPERSON CRUDUP: Yes.

9 MR. MONTROYA: The witness needs to be sworn.

10

11 CLEOPATRIA MARTINEZ,

12 called as a witness herein, having been first duly  
13 sworn, was examined and testified as follows:

14

15 DIRECT EXAMINATION

16

17 BY MR. MONTROYA:

18 Q. Professor Martinez, I want to quickly go  
19 through your background because I know that your life is  
20 more than the allegations that are our present concern.  
21 First of all, where were you born?

22 A. I was born in Las Vegas, New Mexico.

23 Q. When were you born?

24 A. 1948.

25 Q. Now, Professor, I need you to speak up. I'm

1 kind of hard of hearing, that's why I speak so loudly.  
2 Other people might be hard of hearing, too, all the way  
3 over there. So, I need to make sure 100 percent they  
4 hear you. Okay?

5 A. Oh. Yes. Of course.

6 Q. So, please raise your voice and I'll remind  
7 you.

8 How old are you?

9 A. I'm 65.

10 Q. Did you go to college?

11 A. Yes.

12 Q. Where?

13 A. Undergraduate at the University of Denver; and  
14 graduate school, University of Colorado in Boulder.

15 Q. Did you go to high school in Denver?

16 A. Yes.

17 Q. Did you graduate from high school?

18 A. Yes.

19 Q. Tell the Committee how high in your high school  
20 class you graduated.

21 A. I graduated sixth out of around 800 students.

22 Q. You graduated in the top 1 percent of your  
23 class?

24 A. Yes.

25 Q. Now, tell the Committee, did your family have

1 enough money to pay for your college education?

2 A. No. I was raised by a single parent, we lived  
3 in federal housing projects and we were on Welfare, very  
4 poor. My education -- any higher education was paid for  
5 by scholarships and grants.

6 Q. What did you major in in college?

7 A. Undergraduate mathematics, my master's was in  
8 education, my Ph.D. was in bilingual mathematics  
9 education.

10 Q. Are you bilingual?

11 A. Yes, I am.

12 Q. Now, in your home as a child, what language did  
13 they speak?

14 A. I spoke Spanish first and I learned English  
15 later in school.

16 Q. Okay. Now, when you were majoring in  
17 mathematics in the University of Denver as an  
18 undergraduate, were there a lot of women math majors?

19 A. No. And I think I was the only non-white math  
20 person in the college, in the university.

21 Q. What year did you graduate from the University  
22 of Denver?

23 A. 1971.

24 Q. Was it -- did you have to work part-time or  
25 full-time?

1           A.    Yes.  I had to work part-time and I lived in --  
2           I rented a room from a person in their house.

3           Q.    And when you went to graduate -- after you  
4           graduated from college, what year was that?

5           A.    I graduated from -- with my bachelor's in 1971,  
6           my masters in 1976, and Ph.D. the spring of 1985.

7           Q.    After you graduated from college, what did you  
8           do next?  Tell the Committee.

9           A.    I went directly to teaching public schools,  
10          Denver public schools for four years; and then I went to  
11          the university -- and, I'm sorry, the Community College  
12          of Denver, Auraria Campus, where I taught for ten years;  
13          then I moved to Scottsdale Community College where I  
14          taught -- Maricopa; I taught Scottsdale ten years and  
15          Phoenix College 18 years.

16          Q.    How did you pay for your master's degree?

17          A.    Grants and scholarships.

18          Q.    How did you pay for your Ph.D.?

19          A.    Grants and scholarships.

20          Q.    How long did you teach at Denver Community  
21          College?

22          A.    About four years, four years almost.

23          Q.    What did you teach?

24          A.    Mathematics and I also taught physical  
25          education.

1 Q. Were there a lot of Hispanic women teaching  
2 mathematics at Denver Community College when you taught  
3 there for four years -- no, for ten years from 1974 to  
4 1984?

5 A. No.

6 MR. UPPAL: Objection. Irrelevant.

7 MR. MONTROYA: Can I respond? I'll tell you why  
8 it's relevant is because you pass judgment on somebody,  
9 you need to know their whole story, not just a fraction  
10 of the story. I'm going to be brief. I could be very,  
11 very long because I can tell you this individual has a  
12 remarkable personal story, so I could go on and on.  
13 Literally, in fact, other scholars have written about  
14 her fascinating and compelling personal story, but I  
15 won't. I just want you to know who this lady is,  
16 especially given the fact that President Solley was  
17 allowed to testify that she didn't trust her and that  
18 she was untrustworthy and that she has a history of  
19 violating the rules, which is not true. This demon- --  
20 her whole life is a reputation of that.

21 MR. UPPAL: I stand by my objection because her  
22 background in this matter or having Hispanic teachers or  
23 students that were at Denver at some point in the past  
24 is totally irrelevant to this. The best way I can  
25 illustrate this is even if Dr. Martinez had rescued a

1 child from a burning building, we could all agree that  
2 that's incredibly altruistic and wonderful but it  
3 doesn't go to the issues that are before the Committee  
4 today.

5 MR. MONTOYA: I was talking about her  
6 educational and professional background, not whether or  
7 not she saved a child from a burning building in her  
8 personal life.

9 DR. REYES: Mr. Chairman, would it be possible  
10 for you to just recognize that how you use your time  
11 will be based on --

12 MR. MONTOYA: Oh, I will be.

13 DR. REYES: -- based on time constraints.

14 MR. MONTOYA: I will. I'm going to go real  
15 quick. You watch.

16 Q. BY MR. MONTOYA: So, tell me, when you taught  
17 at Denver Community College, were there a lot of  
18 Hispanic math professors?

19 A. No, I was the only one.

20 Q. When you taught at Denver Community College,  
21 were there a lot of bilingual math professors?

22 A. I was the only one, no.

23 Q. Why did you leave Denver Community College?

24 A. I like -- Maricopa was one of the top-rated  
25 community college districts in the country and I liked

1 Phoenix and so did my family. And I was very cold in  
2 Denver and the weather was nice here.

3 Q. So you moved to Phoenix?

4 A. Yes.

5 Q. And you started up at Scottsdale?

6 A. Yes.

7 Q. And tell the members of the community what you  
8 taught at Scottsdale Community College?

9 A. Mathematics.

10 Q. How did you like it?

11 A. I loved it. I still do.

12 Q. Isn't it true that you taught at Scottsdale  
13 Community College from 1985 to 1995?

14 A. Yes.

15 Q. And now tell the Members of the Committee why  
16 you left Scottsdale Community College. Did you chose to  
17 or were you forced to?

18 A. I --

19 Q. Speak up.

20 A. I was interested in getting more diversity in  
21 both the student body and in the faculty and Phoenix  
22 College was extremely diverse. It's the flagship  
23 college of the Maricopa District. I liked the --  
24 everything about Phoenix College and my colleagues had  
25 been urging me to move over.

1 Q. When you worked at Denver Community College,  
2 were you ever accused of violating the copyright laws?

3 A. No.

4 Q. Were you ever accused of any misconduct?

5 A. No.

6 Q. When you were work at Scottsdale Community  
7 Colleges for a decade, were you ever accused of  
8 violating the copyright laws?

9 A. No.

10 Q. Were you ever accused of any misconduct?

11 A. No.

12 Q. When you moved to Phoenix Community College in  
13 1995, what did you teach?

14 A. I taught mathematics.

15 Q. Did any students accuse you of being  
16 incompetent?

17 A. No.

18 Q. Now -- now, you heard someone testify in a very  
19 vague and insubstantial, nonspecific way --

20 MR. UPPAL: Objection. Not a question. That's  
21 a speech. Objection.

22 CHAIRPERSON CRUDUP: Please continue.

23 Q. BY MR. MONTROYA: -- that students were starting  
24 to complain about you. Have you ever been the subject  
25 of a student complaint?

1 A. No.

2 Q. Do you love to -- did you hear my opening  
3 statement?

4 A. Yes.

5 Q. You taught at the District for 28 years?

6 A. Yes.

7 Q. You're 65 years old?

8 A. Yes.

9 Q. Why don't you retire?

10 A. I really enjoy teaching and I'm not ready to  
11 retire. It's a love of mine. It's second only to my  
12 children. I love teaching and that's why I'm not at the  
13 university, I'm at the community college. And I think I  
14 do a really good job.

15 Q. Do your students tell you you do a good job?

16 A. Yes, they do.

17 Q. Now, I think somebody mentioned that you were  
18 the chairperson of the Math Department at Phoenix  
19 College?

20 A. Yes.

21 Q. When?

22 A. Around 2005 to 2008.

23 Q. Okay. Is that an elected position?

24 A. Yes, it is.

25 Q. So, your -- your faculty elected you to that

1 position?

2 A. Yes.

3 Q. What are the responsibilities of a Chair of a  
4 Math Department at a community college here in Maricopa  
5 County?

6 A. I -- I am the voice of the department to the  
7 Administration and visa versa; I bring the messages of  
8 the Administration to the department; I schedule all the  
9 classes both for adjunct and for residential faculty; I  
10 deal with any problems that exist between students and  
11 faculty and vice versa or faculty with faculty.

12 Q. Now, when you were chairperson of the faculty,  
13 did the District educate you regarding copyright law?

14 A. No.

15 Q. Did anyone come and tell you what you could or  
16 couldn't copy under the federal copyright laws?

17 A. No.

18 Q. Now, you've been a -- let me see if I -- let me  
19 see how my math is working out for me this afternoon.  
20 You taught at the Denver Community College for ten  
21 years, right?

22 A. Yes.

23 Q. But then you taught at the Phoenix Community  
24 College since 1985?

25 A. Yes.

1 Q. So, in fact, you have been in --

2 A. Maricopa. Excuse me. Maricopa County.

3 Q. Maricopa County.

4 Isn't it true you've been an educator for  
5 almost 40 years?

6 A. More than 40 years.

7 Q. And that would include your -- your teaching  
8 experience as a high school teacher, right?

9 A. Yes, it does.

10 Q. Now, have you ever -- and, plus, you went to  
11 college, graduate school, and you were in a doctoral  
12 program, right?

13 A. Yes.

14 Q. Now, did you ever get any handouts from your  
15 faculty members when you were in graduate school?

16 A. Yes.

17 Q. Were they of publications other than from the  
18 person handing the handout to you?

19 A. Sometimes.

20 Q. Did anyone say: Hey, that's a violation of  
21 copyright law?

22 A. No.

23 Q. Now, you've also seen your colleagues at  
24 Maricopa Community College District use handouts that  
25 they did not write, correct?

1 A. Yes.

2 Q. Is that -- how common is that?

3 MR. UPPAL: Objection. Facts not in evidence.  
4 Lacks foundation.

5 MR. MONTROYA: Excuse me. This is how -- this  
6 is how you get facts into evidence. As your counsel  
7 will tell you, you get facts into evidence through  
8 direct examination based upon a witness's personal  
9 knowledge. That is absurd, that objection.

10 MR. UPPAL: Objection. The question that he  
11 just asked is essentially how common is that, meaning  
12 how -- implying how common is it for everybody else to  
13 rampantly violate copyright law. If he wanted to go  
14 through this line of questioning, he owes a lot of  
15 exhibits that are not in evidence.

16 MR. MONTROYA: I can ask her, ladies and  
17 gentlemen of the Committee, based on her own personal  
18 knowledge, Lord knows she's worked at the District for  
19 28 years, that's a long time.

20 MR. UPPAL: I'm not going to get into prefaces  
21 like "Lord knows," because I just don't think that's  
22 appropriate for me to say. But what I am going to say  
23 is that there is no evidence. There's supposed to be  
24 evidence to back up what the questioning is going to be  
25 about and this is far afield, and --

1 CHAIRPERSON CRUDUP: So, rephrase the question.  
2 You're asking her opinion, so.

3 MR. MONTTOYA: Well, I'm not asking her opinion.  
4 I'm asking her what she's seen. And your lawyer will  
5 also tell you, that what all lawyers know, is evidence  
6 can be both documentary and testimonial, and they're  
7 entitled to equal weight.

8 Q. BY MR. MONTTOYA: Okay. I'm not asking you to  
9 guess --

10 MR. UPPAL: Objection. This subject matter was  
11 not disclosed as a subject of testimony and it's just  
12 outrageous because, you know --

13 CHAIRPERSON CRUDUP: Proceed.

14 MR. UPPAL: -- if he -- if he -- if Dr. --

15 MR. MONTTOYA: You know, that's what's  
16 outrageous is he --

17 MR. UPPAL: I haven't finished yet. I haven't  
18 finish- --

19 MR. MONTTOYA: That is an example of what the  
20 District is doing in this case. The --

21 MR. UPPAL: He's talking over me.

22 THE COURT REPORTER: I'm sorry. Please.

23 MR. UPPAL: He's talking over me just like he  
24 talked over the witnesses.

25 CHAIRPERSON CRUDUP: Please continue. Ask your

1 question.

2 Q. BY MR. MONTTOYA: Now, Cleopatria, I'm not  
3 asking you to guess and I'm not asking you for your  
4 personal opinion, I'm asking you to tell the Committee  
5 -- you're under oath -- what you've seen with your own  
6 eyes over the 28 years that you've worked at the  
7 District. Do you understand that?

8 A. Yes.

9 MR. UPPAL: Objection. This is not a subject  
10 of testimony that was disclosed. And the reason that  
11 this is important is, if she is about to say that other  
12 people do this, it had to be disclosed so we could bring  
13 those other people here under oath and have them refute  
14 it.

15 MR. MONTTOYA: That is not a rule -- that might  
16 be a rule in federal court, but that is not the rule in  
17 administrative law. To the contrary.

18 MR. CALDERON: Mr. Chair, Members of the  
19 Committee, I recommend you let the question be answered  
20 and then let the parties move on.

21 MR. MONTTOYA: That's what I intend to do if I  
22 can.

23 Q. BY MR. MONTTOYA: Okay. Tell the Committee what  
24 you've seen over the 28 years in reference to scholars  
25 copying other scholar's work for educational purposes,

1 classroom instruction purposes, teach their students?

2 A. Educators do this all the time. They will get  
3 -- if they find some material that will help their  
4 students learn something, they'll make copies of it and  
5 hand it out to students. This is not an unusual  
6 practice.

7 MR. UPPAL: Objection. I move to strike. If  
8 she's going to testify about this, she needs to testify  
9 about who the other people are and name them.

10 MR. MONTROYA: He can ask those questions -- he  
11 can ask these questions when it's his turn.

12 MR. UPPAL: It's undisclosed and she's not even  
13 testifying to any facts. Did you get a name here of  
14 anyone else who has done this or what they've done? No.

15 CHAIRPERSON CRUDUP: We're waiting for --

16 DR. CAIRE: I think you would have that right  
17 when you cross-examine, to refute any kind of facts or  
18 perspective.

19 MR. UPPAL: Sir, the problem is that this line  
20 of questioning has not been disclosed. You're supposed  
21 to disclose it in your brief.

22 MR. MONTROYA: There is no disclosure rules in  
23 administrative law. That is ridiculous.

24 MR. UPPAL: It's not ridiculous at all. We  
25 were required to --

1 MR. MONTOYA: This is a legal question --

2 MR. UPPAL: -- submit briefs that --

3 MR. MONTOYA: -- that you should talk to you  
4 legal counsel on.

5 MR. UPPAL: -- and then there was a requirement  
6 for supplemental briefs.

7 DR. REYES: Mr. Chairman, please. It seems  
8 that, if I'm understanding correctly, the question is  
9 getting diluted.

10 I'm not understanding how your question, Mr.  
11 Montoya, leads to incriminating others. The fact that  
12 educators use other works -- other people's works does  
13 not mean they're infringing on copyright law.

14 MR. MONTOYA: I know.

15 DR. REYES: So, we can't make that assumption.  
16 If we could adjust that question and move on quickly.

17 MR. MONTOYA: I was about to before I was  
18 interrupted with the same interruption that was ruled  
19 upon by the Chair twice.

20 Q. BY MR. MONTOYA: Professor Martinez, have you  
21 ever heard of the Fair Use Doctrine?

22 A. Yes, I have.

23 Q. Tell -- tell -- and did you learn it as a  
24 teacher?

25 A. Yes.

1 Q. Did you learn it at Phoenix College?

2 A. Well, I --

3 Q. Or the Maricopa Community College District?

4 A. I've known about fair use, I'd say, all my  
5 career.

6 Q. Did you believe that when you -- when you and  
7 your colleagues were using the work of others, that you  
8 were doing it under the Fair Use Doctrine as educators  
9 engaging in classroom instruction?

10 A. Yes.

11 Q. When is the first time that an administrator  
12 told you that your use of copies to help educate your  
13 students violated federal copyright law?

14 A. In 2012, in January, when I received the letter  
15 the e-mail from Ronnie Elliot.

16 Q. Okay. I want to --

17 DR. REYES: I'm sorry. Please. Correction, is  
18 that "2012," you stated?

19 THE WITNESS: I'm sorry. Did I say "2012"?  
20 2010.

21 MR. MONTOYA: Can you hear her?

22 DR. REYES: Yes.

23 MR. MONTOYA: Are you all good hearing?

24 Q. BY MR. MONTOYA: But, could you raise your  
25 voice, please, because I'm getting paranoid about it.

1 A. Yes.

2 Q. Okay. So, someone came to you and told you  
3 that your materials might be violative of federal  
4 copyright law?

5 A. No. I received an e-mail from Ronnie Elliot  
6 saying that there was a question.

7 Q. And that was in January of 2010?

8 A. '10.

9 Q. Okay. Now, I want you to tell the Committee  
10 this really important fact that doesn't even involve  
11 dispute regarding federal copyright law: When is the  
12 last time that someone from the Administration told you  
13 that a specific material that you were using to instruct  
14 your students, to teach your students, violated federal  
15 copyright law?

16 When is the last time someone pointed out  
17 something and said: Hey, this violates federal  
18 copyright law the way Mr. Sean Garrison was testifying  
19 this morning?

20 A. It was the -- it was the Sean Garrison  
21 material.

22 Q. And isn't that true that that was all used by  
23 you in the spring semester of 2010 and after that you  
24 never used it again?

25 A. Yes. That's correct.

1 Q. Okay. Now, I'm going to get specific with you.

2 MR. MONTOYA: And this is based upon the  
3 District's own exhibits. This is Exhibit 6, page 27.  
4 District's Exhibit 6, page 27. Garrison Exhibit 27.  
5 I'll show you the cover page. It's her lecture notes  
6 for MAT 182, precalculus, Dr. Cleopatria Martinez.

7 Q. BY MR. MONTOYA: I'm going to hand it to you  
8 and I'm going to ask you some questions about it.

9 A. Okay.

10 Q. Thank you.

11 A. Yes.

12 Q. Professor Martinez, what is that document?

13 A. These are the notes that I gathered in January  
14 of 2010 to teach the trigonometry -- tigmometry class  
15 MAT 182. I pulled them from my fall materials to use in  
16 lecture for my MAT 182 trigonometry class.

17 Q. Okay. On the front page you said you prepared  
18 these for your fall course?

19 A. I -- I originally prepared materials for fall  
20 in 2009. I pulled from those materials the lecture  
21 notes that would fit in spring of 2010.

22 Q. Okay. So it says fall of 2009 up here, right?

23 A. Yes.

24 Q. Isn't it true that you used those instead in  
25 the spring of 2010?

1           A.    I used the sections from 2009 in 2010, and I  
2           used the original notes in 2009 fall.

3           Q.    Okay.  When is the last time you used these  
4           materials?

5           A.    In --

6           Q.    Tell the Committee --

7           A.    In spring of 2010.

8           Q.    You haven't used them since?

9           A.    No.

10          Q.    Isn't it true the reason why you haven't used  
11          them since is because you were told they violated  
12          federal copyright law?

13          A.    Yes.

14          Q.    Okay.  Now, did you write everything in -- in  
15          those lecture notes?

16          A.    Well, I'd like to make a correction.  I was  
17          told they could -- they might violate copyright law.

18                   And I wrote everything except for the problems  
19          in here.

20          Q.    Okay.  Where did you get the problems from?

21          A.    I got the problems from the precalculus  
22          Sullivan textbook.

23          Q.    Had you ever used that textbook in your  
24          classes?

25          A.    Yes.

1           Q.    Were you using that textbook in some of your  
2           classes in the spring of 2010?

3           A.    No.

4           Q.    When was the last time you would have used that  
5           textbook?

6           A.    In fall of 2009.

7           Q.    Okay.  Now -- now tell me what percentage of  
8           the content in those materials you derived from the  
9           Sullivan?

10          A.    Less than half a percent, less than a percent.

11          Q.    Less than -- less than half a percent?

12          A.    Yes.

13          Q.    Why didn't you write the publisher and ask  
14          permission?

15          A.    Well, I thought it was by fair use, that it fit  
16          under fair use.

17          Q.    And isn't it true that after the District  
18          started to accuse you of violating the copyright laws  
19          you did write the publisher's asking for permission?

20          A.    Yes, I did.

21          Q.    How many times -- do you know who Maggie  
22          McConnell is?

23          A.    Yes.

24          Q.    Who is she?  Tell the Committee.

25          A.    She's in-house counsel for the Maricopa

1 District Community College District.

2 Q. Have you ever asked or tried to ask Maggie  
3 McConnell any questions regarding complying with federal  
4 copyright law?

5 A. Yes. Ann Rosel (phonetic), the libr- -- one of  
6 the librarians at Phoenix College suggested that I call  
7 her, that Maggie McConnell had volunteered to help  
8 faculty individually and respond to their questions  
9 regarding copyright. But when I contacted Maggie  
10 McConnell, she refused to do so. She refused to help me  
11 at all.

12 Q. Did you contact her telephonically,  
13 face-to-face, e-mail, by letter, or all of the above?

14 A. It was definitely by telephone and I also had  
15 some e-mail communication with her.

16 Q. What did she tell you when you asked her for  
17 guidance?

18 A. She said she didn't have time to deal with  
19 individual issues presented by faculty members on  
20 copyright.

21 Q. Now, you also talked about you spoke to a  
22 Phoenix College librarian, did anyone instruct you to  
23 speak to the Phoenix College librarian?

24 A. I wrote to Dr. Solley asking -- saying that I  
25 would like to get additional assistance since I was

1       unable to attend the workshop.

2           Q.     Let me stop you there. Tell the Committee why  
3       you were unable. Were you out partying with a friend or  
4       were you going on vacation? Tell the Committee why you  
5       were unable to go to that, because there was a  
6       suggestion you just blew it off?

7           A.     Absolutely not. I had a previous commitment  
8       that I had made weeks before that -- so, I was unable to  
9       attend.

10          Q.     What kind of commitment?

11          A.     I don't recall now what it was, but I remember  
12       at the time I had to chose between the two and I felt  
13       that the other one was my bigger commitment.

14          Q.     Did anyone report to you what Maggie McConnell  
15       said at that meeting?

16          A.     I asked to meet with Ann Rosel the librarian at  
17       Phoenix College regarding copyright, and Ann Rosel did  
18       go -- communicate with me much of what was discussed at  
19       the -- at the workshop and said to me that I seem to  
20       know more about -- as much about copyright as she did.  
21       But neither of us was real clear on the specifics when  
22       you relate mathematics and connect to copyright. We  
23       weren't clear there, neither of us.

24          Q.     Is it your belief that a mathematical  
25       calculation, simple or complex, can be copyrighted?

1 A. I believe it cannot be copyrighted.

2 Q. Some of what you copied from the Sullivan text  
3 consisted of pure mathematical equations, right?

4 A. Yes.

5 Q. So, of that point -- of that less than  
6 .5 percent, some of that less than .5 percent was  
7 actually pure math, wasn't it?

8 A. Yes. Equations.

9 Q. But some of it wasn't, right? Some of it  
10 consisted of introductory statements or questions,  
11 correct?

12 A. Yes.

13 Q. And after you were told not to copy those types  
14 of materials again, what did you do?

15 A. I didn't copy them. I replaced all of the  
16 problems with problems I made up of my own.

17 Q. Tell the Committee when you did that.

18 A. I began doing it in February when I got the  
19 e-mail from --

20 Q. February of what?

21 A. February of 2010, when I got the e-mail from  
22 Ronnie Elliot. And I proceeded to complete that,  
23 removing all problems and replacing with my own by April  
24 of 2010.

25 Q. Okay. Now, I'm going to hand you the Exhibit 2

1 of -- I think I might have already did it.

2 MR. MONTROYA: Pavneet, can I borrow Exhibit 2  
3 to Exhibit 6?

4 MR. UPPAL: My Exhibit 2?

5 MR. MONTROYA: Of your exhibit. And we don't --  
6 we can just show it to her right from where you're  
7 sitting so I don't waste the Committee's time finding  
8 it.

9 MR. UPPAL: Sure.

10 MR. MONTROYA: Thank you, sir. Is that --

11 MR. UPPAL: Here.

12 THE WITNESS: Here it is. Here it is.

13 MR. MONTROYA: Oh, okay. Thank you, though.  
14 Appreciate that.

15 MR. UPPAL: Can you pass me a bottle of water  
16 when you get back?

17 MR. MONTROYA: I sure will.

18 MR. UPPAL: Thanks.

19 Q. BY MR. MONTROYA: Exhibit 2 of District's  
20 Exhibit No. 6 starts at page 102. Now tell the  
21 Committee what that is.

22 A. Exhibit 2 is the rest of the material that I  
23 had pulled from my lecture notes from 2009 to be used in  
24 my trigonometry class in 2010, spring.

25 Q. Okay.

1 A. Just a continuation.

2 Q. So, I want to make sure that the Committee gets  
3 this straight. So, when is the last time that you used  
4 the exhibits of Exhibit 2 in District Exhibit No. 6?

5 A. Spring of 2010.

6 Q. Have you ever used them again?

7 A. No.

8 Q. Why?

9 A. The Administration -- well, they said I  
10 couldn't use them and I didn't want to use them because  
11 of their questioning. I don't want to go against them.

12 Q. Okay. So, they said they potentially violated  
13 copyright law?

14 A. Correct.

15 Q. Now, the materials in that set of documents of  
16 your lecture notes, did you write everything in there?

17 A. They are a continuation of Exhibit 1 which I  
18 wrote the same way. I pulled materials from the notes I  
19 had written to lecture from in 2009, that I could use in  
20 2010, spring. And so they are based on what I wrote and  
21 then the problems that I copied from the Sullivan  
22 textbook.

23 Q. Okay. Now, tell the Members of the  
24 Committee -- you're a mathematician -- you're best  
25 estimate of what percentage of the copied material is in

1 Exhibit 2?

2 A. Well, in Exhibit 2 it would probably be like  
3 one-tenth of 1 percent, because all the homework  
4 problems have been pulled out. The only thing left in  
5 Exhibit 2 are examples.

6 Q. And are those examples mathematical formulas  
7 and mathematical equations?

8 A. Yes.

9 Q. And is it -- in your view, can you copyright  
10 mathematical formulas and mathematical equations, simple  
11 or complex or in between?

12 A. I believe they cannot be copyrighted.

13 Q. Isn't it true that mathematicians are always  
14 borrowing each other's problems, snippets of each  
15 other's problems?

16 A. Yes, it is.

17 Q. Have your colleagues borrowed your problems?

18 A. Yes, they have.

19 Q. Have they asked for your permission?

20 A. It is understood that if I give them something  
21 of mine, they can use it. As well as if they give me  
22 copies of what they've written, I can use them as well.  
23 They're not published materials.

24 Q. Okay. Now, I'm going to direct your attention  
25 and hand you Exhibit 3 to the District's Exhibit No. 6.

1 MR. UPPAL: And what's the Bates number on  
2 that?

3 MR. MONTOYA: The Bates number --

4 THE WITNESS: 153.

5 MR. MONTOYA: -- starts at 153 and it ends at  
6 245 -- no, 249.

7 Q. BY MR. MONTOYA: Tell the Committee what that  
8 is. What is that stuff?

9 A. Exhibit 3 are notes that -- material that I  
10 wrote using all the handouts I've made or that  
11 colleagues have given me throughout my mathematic career  
12 that pertain to basic arithmetic.

13 Q. Okay. Did you get any of it from Sullivan?

14 A. No.

15 Q. Did you get any of it from Tussy & Gustafson?

16 A. No. These materials came from myself that --  
17 over the years and from colleagues who had shared  
18 materials with me.

19 Q. And did the colleagues share the materials with  
20 the understanding you can use them to teach your  
21 students?

22 A. Yes.

23 Q. Now, let me ask you a question, tell the  
24 Committee how much money you made off of the first stack  
25 of papers, what I call the -- it's Exhibit 1 to

1 District's Exhibit No. 6. How much did you make on  
2 that?

3 A. I made no money.

4 Q. How much money did you make to Exhibit 6, part  
5 two?

6 A. None.

7 Q. How much money did you make on Exhibit 3  
8 part -- Exhibit 6, part three?

9 A. No, none.

10 Q. Now, do you use those materials for any purpose  
11 other than instructing your classroom students?

12 A. No. I only did it for instruction of my  
13 students.

14 Q. And you thought you could under the Fair Use  
15 Doctrine?

16 A. Yes.

17 Q. Now, let me ask you a question, we talked about  
18 this guy whose going to testify this afternoon named  
19 Fred Bellamy. Isn't it true that when the District  
20 wouldn't give you any legal direction, that you had to  
21 actually go out and find a private lawyer who would give  
22 you legal direction?

23 A. That's exactly what happened.

24 Q. And tell the District in your own words how you  
25 came about meeting Fredric Bellamy?

1           A.    Well, I talked with colleagues of mine trying  
2           to find out how I could get information on copyright  
3           because I wanted to know what was the violation or how  
4           could I not violate -- what could I do to not violate, I  
5           wanted to, to abide by all the laws, both the Maricopa  
6           District as well as Federal, State, everything. And so  
7           I -- in talking to colleagues one of my colleagues said  
8           that he had found this one attorney whose entire life  
9           was based on copyright law and that I should contact  
10          him, so I did. And I took my materials to him and I  
11          asked him to give me his opinion as to whether I had  
12          violated copyright and if I had how could I not violate  
13          copyright because I wanted to be in compliance.

14          Q.    What was his name?

15          A.    Fredric Bellamy.

16          Q.    Tell the Committee how much he charged you?

17          A.    He didn't charge me anything.

18          Q.    Did he tell you why he didn't charge you  
19          anything?

20          A.    No, he did not tell me.

21          Q.    He'll tell the Committee when he gets here.

22          A.    Okay.

23          Q.    What did he tell you? Summarize that for the  
24          Committee briefly because he's going to come and talk to  
25          the Committee himself, face-to-face.

1           A.    He told me in essence that this was a tempest  
2           in a teapot, there was nothing here that violated  
3           copyright; that I was using my lecture note -- these  
4           were lecture notes, they were written to present a  
5           lecture to help students, to provide space for them to  
6           write in because they can't write in their textbook; it  
7           was purely for educational purposes.

8           DR. REYES:   Can I ask a question?   May I ask a  
9           question?

10          MR. MONTOYA:   Of course you can.

11          DR. REYES:   Did Mr. --

12          MR. MONTOYA:   Bellamy.

13          DR. REYES:   -- Bellamy, did he review the same  
14          materials that Mr. Garrison reviewed?

15          THE WITNESS:   At the time -- yes, I gave Mr.  
16          Bellamy the spring 2010 materials which are Exhibits 1  
17          and 2.   I don't know how much of it I gave him, but it  
18          was the same material, the very exact one.   And I also  
19          gave him copies of the textbook where I had copied the  
20          problems.

21          MR. MONTOYA:   But the answer is no.   At  
22          Exhibit 6, part one, yes; Exhibit 6, part two, yes; then  
23          she gave him the book.   But Exhibit 6, part three hadn't  
24          been created yet so she did not give him that.   But if  
25          you read Mr. Garrison's opinion, his main problems were

1 with the two materials that Mr. Bellamy did review.

2 MR. UPPAL: Objection. Objection. Now, Mr. --  
3 Mr. Montoya has crossed the line into testifying --

4 MR. MONTOYA: You did that Pavneet.

5 MR. UPPAL: -- what the expert's opinion was.

6 MR. MONTOYA: You did that Pavneet.

7 MR. UPPAL: Because he should be  
8 cross-examined --

9 MR. MONTOYA: You too.

10 MR. UPPAL: -- if he's going to testify what  
11 the witness testified about. He's literally testifying  
12 to you --

13 MR. MONTOYA: That's what you did.

14 MR. UPPAL: -- what the expert witness  
15 allegedly told you and what the expert witness's main  
16 problem was.

17 CHAIRPERSON CRUDUP: Move on.

18 MR. MONTOYA: I'll move on.

19 Q. BY MR. MONTOYA: Okay. Now, Exhibit 3, so you  
20 didn't use any -- you didn't copy from any published  
21 textbook?

22 A. Not at all.

23 Q. And now tell the -- tell the Members of the  
24 Committee, when was the last time that you used  
25 Exhibit 3?

1 A. In spring of 2010.

2 Q. Have you used it since then?

3 A. No.

4 Q. Why not?

5 A. The Administration does not allow me to use  
6 them.

7 Q. So you did what the Administration said?

8 A. Yes.

9 Q. Now, I'm going to give you what's been --  
10 that's Exhibit 4 -- or, part six [sic] to the District's  
11 Exhibit 6, it's MAT 187 precalculus algebra section  
12 lecture notes starting at Garrison 260.

13 Tell the Committee what that is.

14 A. Exhibit 4 is comprised of my lecture notes,  
15 notes that I was going to lecture from for fall of 2010  
16 when I taught the same class that I had taught the  
17 previous year in fall of 2009. But in these materials,  
18 I had removed every problem that was from the textbook I  
19 would be using and I had replaced all those problems  
20 with my own problems.

21 Q. Now, tell the Committee loud and clear, because  
22 I want them to get this straight, when is the first time  
23 that you used the materials in District's Exhibit 6,  
24 part four the first time?

25 A. The materials in Exhibit 4, is that the one

1           you're talking about --

2           Q.    Yeah.

3           A.    -- that you just gave me?

4           Q.    Those.  When was the first time you used them?

5           A.    These materials have never been used.

6           Q.    Why?

7           A.    Because the Administration disallowed my use of  
8           them.

9           Q.    Okay.  So, isn't it true that -- that all of  
10           the materials that the District claims violated federal  
11           copyright law were used in the spring of 2010?

12          A.    Yes.

13          Q.    And you haven't used any of those materials  
14           since?

15          A.    No, I have not.

16          Q.    Because the District told you not to?

17          A.    Correct.

18          Q.    Now, Sean Garrison testified to this Committee  
19           that you never use textbooks; is that true?

20          A.    Absolutely not true.

21          Q.    Tell the Committee how that's false.

22          A.    The only time I did not use a textbook was when  
23           I taught the arithmetic class, the basic arithmetic 082  
24           class.  That's the only time I did not use a published  
25           textbook.  All the other classes were taught requiring a

1 published textbook and the students had purchased the  
2 published textbook.

3 Q. Are you against textbooks?

4 A. No, no. I like textbooks. But I felt my  
5 arithmetic class, I thought my material was superior to  
6 the textbooks that were out; and I was always writing  
7 these materials to supplement the textbooks, so I just  
8 thought, just put them all together. I mean, you're  
9 writing it anyway and using it, so I used this in place  
10 of a textbook. And it had been approved by the Math  
11 Department at Phoenix College for use by any faculty  
12 member, which means they can make copies of them.

13 Q. And that's District Exhibit 6, part four that's  
14 been approved?

15 A. Yes.

16 Q. And what's the Bates number on that at the  
17 beginning?

18 A. 153.

19 Q. The District approved it?

20 A. Yes, the Math --

21 Q. You still didn't use it?

22 A. The Math Department approved it.

23 Q. Let me ask you this: Did anyone in a position  
24 of authority at the District, Professor Martinez, tell  
25 you that unless you had written authorization from a

1 publisher's agent, you could not even use a snippet of  
2 publisher's materials because it violated federal  
3 copyright law?

4 A. That's --

5 Q. We've heard Dr. Kakar testify to that  
6 repeatedly.

7 A. That was the information I was given by Dr.  
8 Solley, Dr. Kakar, and Maggie McConnell.

9 Q. Did Mr. Bellamy confirm that for you?

10 A. No.

11 Q. Now, you also heard Dr. Kakar testify that even  
12 though simple arithmetic problems weren't subject to  
13 copyright, complex arithmetic equations were subject to  
14 copyright. Did Mr. Bellamy say that?

15 A. No, and none of these problems are complex,  
16 they're all simple.

17 Q. Let's talk about that. Tell me what level of  
18 math you teach at Phoenix College to your students.

19 A. I teach the full range from basic arithmetic  
20 through calculus.

21 Q. And do you teach mathematical theory?

22 A. I teach theory in the context of teaching the  
23 content but not separately.

24 Q. Do you teach the philosophy of mathematics?

25 A. I teach the philosophy and context of teaching

1 the subject but not separately.

2 Q. Let me ask you this: In your 40-plus years of  
3 teaching, have you found that sometimes you have to  
4 modify your teaching materials to satisfy your needs of  
5 your particular class members?

6 A. That is always happening. We have a textbook  
7 and I present the content of the textbook in a way that  
8 I think my students, whoever they are, will understand  
9 it.

10 Q. Now, why do you prepare lecture notes to give  
11 to your students? Why don't you make your lazy students  
12 take notes when you're lecturing?

13 A. Well, I did that for years, I would write  
14 things either on the board or on the overhead screen and  
15 I noticed they were spending a lot of time copying what  
16 I was writing and it took up my instructional time, when  
17 that wasn't the important part. The important part was  
18 for them to listen to what I was saying and learn. So,  
19 I decided those things that I'm going to say to them  
20 that they don't act, I should have it already written  
21 down, it will save us time, it will give the student an  
22 opportunity to think about what's being said rather than  
23 copy it down and not be able to think about it. And  
24 then once they can think about what's being said, then  
25 they can do examples and following the procedure I gave

1           them.

2           Q.    Have your students given you any feedback as to  
3           the efficacy of that teaching methodology?

4           A.    The students are very grateful that they don't  
5           have to copy the question or the notes that I am  
6           lecturing -- my lecture material and that they can just  
7           refer to it in the book and, yet, they get to practice  
8           in the lecture materials, whatever it is I'm lecturing  
9           about and these documents don't get lost and shuffled  
10          all over the place because they can't write it in the  
11          textbook. Before this, they'd have to write separate  
12          notes and the textbook and the separate notes got mixed  
13          up and lost and they weren't able to keep organized.  
14          And this is a method that has helped them and it has  
15          been very appreciative, this type of organization, this  
16          type of instructional presentation.

17          Q.    You just testified, Professor Martinez -- Dr.  
18          Martinez, that your students couldn't write in your  
19          textbook. Explain to the Committee why.

20          A.    Well, the students like to resell the textbooks  
21          after the class is finished and they can't resell the  
22          textbook that's been written in, so they protect the  
23          textbook so they can get resale value from it, and then  
24          anything they want to keep they need to write down.

25          Q.    Are you a lawyer?

1           A.    No, I'm not.

2           Q.    Now, when you were meeting -- how many  
3 administrators did you meet with at Phoenix College or  
4 from the District regarding the issue of copyright?

5           A.    I met with several administrators, Anna Solley,  
6 Cassandra Kakar, Paul DeRose -- I met with several.

7           Q.    Now, were they uniformly polite with you when  
8 you met with them?

9           A.    No, they were uniformly cold and distant with  
10 me and it was scary always meeting with them. Because  
11 instead of engaging in a conversation to find out what  
12 are you talking about or how can I do better here? They  
13 consistently reiterated the language of policy, of  
14 regulation, and of the law. And in -- they just read  
15 those statements back to me and I didn't always  
16 understand, or I wanted to get a question about how  
17 mathematics fits into that, or what I could do to do a  
18 better job and not violate their sensitivities, but that  
19 was not allowed. It was just: Do you understand this,  
20 that you are not to -- do you understand that you're not  
21 to copy material without permission? And I do  
22 understand that, but --

23           Q.    But -- but do you remember Sean Garrison  
24 testifying to this Committee under oath that under the  
25 Fair Use Doctrine you can copy something without

1 permission?

2 A. Yes.

3 Q. Within certain limitations?

4 A. Yes, but the information I was given is you may  
5 not copy without permission. There were -- it was a lot  
6 of information of that nature because, I guess, that's  
7 the way they were interpreting. But they -- when I  
8 couldn't ask a question, they wouldn't answer any  
9 question I asked that was specific to mathematics.

10 Q. Were you intimidated?

11 A. I was extremely intimidated.

12 Q. Now, the fact that you were intimidated, did  
13 that have an impact upon your ability to -- to work with  
14 them and to do your job?

15 A. Well, I -- the fact that -- the intimidation  
16 wasn't the bad thing, the bad thing was that they  
17 wouldn't talk with me, they wouldn't answer my  
18 questions, they wouldn't get down to specifics in terms  
19 of their complaints. For instance, they said: We don't  
20 have faith in you, we've lost faith. Well, okay, how --  
21 how can I gain faith with you or how did I lose it? And  
22 they would not discuss that. It's your job to find out  
23 how you did that. I can't read somebody's mind.

24 It was all very vague that way: It's your job  
25 to find out how to make us believe you.

1 Q. Are you -- are you rebellious? Are you a  
2 rebel?

3 A. I want -- no. I want to know what I can do to  
4 address their concerns. I just want to know what it is.  
5 What can I do?

6 Q. Are you afraid to lose your job?

7 A. Yes. I don't want to lose my job, I love my  
8 job. I love teaching. I love my students and I really  
9 enjoy my colleagues. There's nothing I would rather do  
10 than this. And I really like Maricopa Community College  
11 District. I like you and I don't even know you because  
12 I know you are all colleagues of mine and I know your  
13 heart is there to help students.

14 If we wanted to do something else, we would go  
15 to the university. There's a lot of places where we  
16 could go and earn more money, but we're here because we  
17 like our profession, we love our profession, and we care  
18 about our students. We want to do the best by them and  
19 we don't want to break any laws. We don't want to lose  
20 our jobs.

21 Q. Now, let's move on to the second prong of the  
22 Administration's case against you, the one based upon a  
23 number list, substantive list rule that you violated the  
24 District's money handling rules. Let's talk about that.

25 Now, did you take some materials to Staples to

1 have copied for your students?

2 A. Yes, I did.

3 Q. Now, first, tell the Committee about the  
4 content of those materials.

5 A. These were materials that had been approved for  
6 use by the Math Department faculty in teaching, like the  
7 course. And in this case, I think it was -- I think it  
8 was college algebra -- it was one of the algebras. And  
9 these materials had been developed by one of the  
10 colleagues, had been used for years by him, had been  
11 used for years by me. So, that semester, it's used as  
12 the -- the classroom textbook. So, I -- I asked my  
13 colleague -- and I didn't need to be asking, I just did  
14 that in abundance of caution. I didn't need to ask  
15 because it was already approved.

16 Q. Asked what colleague?

17 A. Ask Tim Bryan for permission to use his  
18 material.

19 Q. What did he say?

20 A. He said yes.

21 Q. Did he say you can use them but you can only  
22 use them on online?

23 A. No. He said go ahead and use them. He was  
24 unable to give them to me, so he said, well, if you have  
25 an old -- you know, a previous time I've given to you,

1       because he had electronically, go ahead and use him.  
2       And I thanked him and proceeded to let my students know  
3       that we were going to be using those materials and  
4       not -- and this happened on a Friday and class began on  
5       a Monday. So, when I met with the students on Monday, I  
6       told them we're not using the textbook, we're using --  
7       the textbook that's on the syllabus, we're using these  
8       materials.

9           Q.    Okay. And did you ever give them to one of  
10       your colleagues to approve for copying item-by-item?

11          A.    I had been told if I copied them piecemeal,  
12       that Icon would copy those. And I thought -- but if I  
13       took the whole stack at once, then I couldn't get them  
14       copied.

15          Q.    Now, did you tell your students: Hey, you can  
16       borrow my copy and copy it yourself on your own time  
17       using your own money?

18          A.    That's exactly what I said. Either now you  
19       need to make copies of this and I recommend you bind  
20       them so you don't lose them and if you don't -- anywhere  
21       you -- copy them anywhere, at home, at school, or at  
22       college; or I can take it, if you want, because I wanted  
23       them to get the booklets as soon as possible, I can go  
24       and make copies on my own time, but if you want me to do  
25       that, you'll need to reimburse me whatever it costs me.

1 And the entire class preferred that I make the copies  
2 myself and that they would reimburse me my cost.

3 Q. Do you regret doing that?

4 A. Now I do. I definitely do.

5 Q. Trying to -- no good deed goes unpunished, have  
6 you ever heard that saying?

7 A. Yes.

8 Q. Tell the Committee how much money you made  
9 making those copies for your students.

10 A. I didn't make any money. I --

11 Q. Did you lose any?

12 A. Yes. I rounded down to \$11.

13 Q. About how much money did you lose?

14 A. Oh, I don't know. Maybe \$25.

15 Q. Did you try to get it back from the students?

16 A. No. Absolutely not, no.

17 Q. Did you use the materials?

18 A. Yes.

19 Q. Now, are you aware of any rules -- maybe you'll  
20 know what those rules are -- that prohibited you from  
21 doing what you've described?

22 A. I am not familiar with any rule. And I did ask  
23 to please show me the procedure, the policy for Phoenix  
24 College that identified that this was wrong. And I also  
25 asked for them to show me where it describes the type of

1 materials that can get copied versus the ones that will  
2 not be allowed to be copied and I was told there was no  
3 such procedure or policy.

4 The policy as stated is quite general and it  
5 refers to athletics, it refers to theatre -- exchanging  
6 money at theatre, it refers to financial aid, but  
7 there's no reference there to this type of situation or  
8 when we get money for students involving clubs, because  
9 we do club work and get money.

10 Q. Okay. Tell -- briefly because the Committee  
11 just heard this and they understand it, I believe --  
12 what is your understanding between being reimbursed for  
13 something and selling something?

14 Did you -- well, let me just ask it this way:  
15 Did you think you were selling the materials to the  
16 students or being reimbursed for your out-of-pocket  
17 costs, rounded out to the lowest dollar?

18 A. No. I made it very, very, very clear to the  
19 students that either they -- they needed to get copies  
20 of the materials, either they go off and make copies of  
21 it at their own expense or -- this is their expense, or  
22 I would be willing to make the copies for them but they  
23 would need to reimburse me whatever it costs. If we  
24 made that arrangement they would need to reimburse me  
25 because I made the copies for them instead of them

1 making them. I was not selling. I was getting  
2 reimbursed.

3 Q. The directive ordered you to give the  
4 reimbursement, the money back to students?

5 A. Yes. And at that time I said, well, then, I'd  
6 like my booklets back. If you're going treat this that  
7 I purchased them, then I'd like the booklets, and I was  
8 told: No, you are giving the booklets to the students.

9 And I said: No, that wasn't our understanding;  
10 it's their cost, it's their booklet, their material and  
11 they agreed. I didn't force them to.

12 Q. How many of your colleagues in the Math  
13 Department in Phoenix College can speak Spanish?

14 MR. UPPAL: Objection. Irrelevant.

15 MR. MONTOYA: I don't think it's irrelevant at  
16 all. There are -- there are math students at Phoenix  
17 College who --

18 CHAIRPERSON CRUDUP: To save time, just  
19 continue. Just answer.

20 THE WITNESS: In the Math Department?

21 Q. BY MR. MONTOYA: Yeah.

22 A. There are four. I think there are four.

23 Q. Do you have students in the Math Department  
24 that can't really speak English as well?

25 A. Yes.

1 Q. Do you sometimes instruct in Spanish when you  
2 need to push someone along?

3 A. Yes, yes.

4 Q. Now, did you pay back the money that you were  
5 reimbursed for?

6 A. I don't consider it pay back.

7 Q. Did you give it back?

8 A. No, I did not.

9 Q. Why not?

10 A. I want to get clear first that this is  
11 something I am supposed to do. I was researching -- I  
12 want to research where are they coming up with this,  
13 because they're -- it seems like the Administration was  
14 just looking for any little thing to cause me grief.  
15 And I wanted to know, show me where it says this or show  
16 me the process that says I can't make these copies at  
17 Icon. Why can't I make it at Icon? They're  
18 instructional materials. The RFP says: If you have  
19 unpublished materials written by the instructor, you may  
20 not cause the student to buy it. That's the RFP. And  
21 here, that's exactly what I was doing. I wanted to make  
22 sure that I was in the clear here.

23 Q. You reminded me of a really good point, because  
24 I remember Dr. Kakar testifying twice that she  
25 recommended that you make your own materials and bind

1           them and sell them to your students at the bookstore.

2           A.    That's exactly what --

3           Q.    Did she testify to you that?

4           A.    Yes, she did.

5           Q.    Did she tell you that?

6           A.    She told me that as well as --

7           Q.    Are you allowed to do that under the  
8   Residential Faculty Policies?

9           A.    No, I'm not. And they also said I could post  
10   them on my Website and then the student could copy. And  
11   I thought, well: What's the difference if you post  
12   them, they copy them.

13          Q.    Plus, do you think -- do all of your students  
14   have access to the Internet?

15          A.    They're --

16          Q.    Do all -- do they?

17          A.    Well, I don't know but I'm assuming that not  
18   everybody does.

19          Q.    Do all of your students have access to a copy  
20   machine?

21          A.    No, they do not.

22          Q.    So you were trying to help your students?

23          A.    Absolutely, I was helping.

24          Q.    Isn't that what teachers are supposed to do?

25          A.    Yes.

1           Q.    So, you never -- did any of your students come  
2           and tell you: Hey, I've been -- I've been told that you  
3           have to give me back that money and I don't want it  
4           back?

5           A.    I had several students really upset because  
6           they received an e-mail from the Administration before I  
7           even knew about it and the Administration came into my  
8           classroom before I was there and talked to the students,  
9           telling them how wrong I was to make these copies and  
10          then sent them this e-mail telling -- and additionally  
11          sent them an e-mail telling them I was to reimburse the  
12          \$11, they were to request it. And the students were  
13          very upset. They didn't want -- they didn't understand  
14          why. They said: I bought this. This is my textbook.  
15          And they couldn't understand, they were asking me: What  
16          could we do? I didn't know what they could do, so I was  
17          just trying to figure it out.

18          Q.    Okay. Now, I want to ask you -- I'm trying to  
19          go quickly -- do you remember when Dr. Kakar testified  
20          that you asked a junior faculty member to make copies  
21          for you so you could subvert the directive that you  
22          couldn't make copies unless they were approved?

23          A.    Yes.

24          Q.    Do you remember her testifying to that? I want  
25          you to tell the Committee what really happened.

1           A.    Okay. Over the weekend in April I think it  
2 was, I had noticed that my students needed some graphs  
3 that were not in the textbook and they are very  
4 important graphs. So, that weekend I spent the whole  
5 weekend generating two pages -- two papers that had  
6 these graphs and all the information I thought was  
7 valuable to them.

8           Q.    Let me stop you. When you say "generated  
9 them," did you copy them from the book? Did you copy  
10 them from the Internet? Did you copy them or did you  
11 generate them independently based upon your own  
12 knowledge?

13          A.    I generated them independently based upon my  
14 own knowledge using the software that was available to  
15 me. And I got the two pages ready and then I couldn't  
16 find -- none of the administrators were to be found that  
17 morning and -- the Chair, the Vice President, the  
18 President, the Dean, no administrator was to be found.  
19 And I wanted to share that material with the class at,  
20 like, 10 o'clock. And I knew they were going to look  
21 for copyright violations, but I knew there was no  
22 copyright violation, I just generated this myself this  
23 weekend.

24                So, I thought, oh -- I thought they were  
25 reasonable. I thought the real concern was copyright.

1       So, thinking innocently that way, I thought, well,  
2       they're going to approve it because I know it's not  
3       copyright violation and I asked -- it was getting close  
4       to, like, five minutes before class. I thought:  
5       They're going to approve it and this way I'll have them  
6       ready. I asked an adjunct to make copies of those two  
7       pages.

8               Now I know I should have waited. And I never  
9       did get to use them because the Chair did not approve  
10      them and I didn't use them. To this day.

11       Q.    Isn't it true that the Chair, you know, with  
12      President Solley's directive that the Chair stopped  
13      approving your own original work that you created based  
14      on your own knowledge, your own education, your own  
15      sweat and blood?

16       A.    Well, this was before Dr. Solley's directive.

17       Q.    That's a good point. So --

18       A.    It was before the directive. And Mr. Sueyoshi  
19      just arbitrarily say "that's copyrighted." I know it's  
20      not copyrighted, I did it myself. Because he was in his  
21      mind, he wouldn't let me copy it.

22       Q.    Okay. Now, remember a bunch of other documents  
23      that Dr. Kakar said that you copied in violation of the  
24      directive, then when I asked her on direct -- this was  
25      kind of deceptive. No, I take that back. This was

1       deceptive.

2               Dr. Kakar was asked by the administration's  
3       counsel: Did she printout a bunch of course materials?

4               MR. UPPAL: Objection. This is not a question.  
5       This is another one of --

6               MR. MONTROYA: Yes, it is.

7               MR. UPPAL: It's one of Mr. Montoya's --

8               MR. MONTROYA: It is a question. You wouldn't  
9       know because you interrupted me.

10              MR. UPPAL: It's a speech, it's not a question.

11              MR. MONTROYA: No, there is a question mark at  
12       the end.

13              MR. UPPAL: It's an inquiry at the end.

14              MR. MONTROYA: I can go on.

15              Q.    BY MR. MONTROYA: Do you remember when Dr. Kakar  
16       testified you printed out a bunch of course materials?

17              A.    Yes, I do.

18              Q.    When she was asked by the administration's  
19       lawyer if that violated a directive, she said, yes. But  
20       when I asked her on cross-examination, isn't it true  
21       that Dr. Martinez [sic] said that was a mistake. Do you  
22       remember that?

23              A.    Yes.

24              Q.    Tell the Committee about that.

25              A.    Well, I wanted a copy of, I think, it was page

1           16. One copy for myself.

2           Q. Of what?

3           A. Some material I had written, I had written.

4           Page 16. And I had a colleague in my office and we were  
5           talking, so as we were talking, I put on the computer  
6           that I put on page 16. After a little bit, I went to go  
7           get my one page, but the printer was printing and I  
8           thought: What's going on? It's printing a bunch.

9           So, I came back to my office and I thought:  
10          What's going on? So, I cancelled the print. I went  
11          back and it was still printing. I came back and I  
12          cancelled the print. Then I called I.T. I said:  
13          What's going on here? I can't stop the print. They  
14          told me how to cancel, which I had already done and it  
15          wasn't cancelling.

16          So, I went back to the office and I unplugged  
17          the printer and then I asked the secretary: I don't  
18          know why it's printing, I wanted one page, how do we  
19          stop this? And then he proceeded to come back to my  
20          office. He tried the same cancel procedure, which  
21          didn't work. And then we -- but, eventually the whole  
22          thing stopped printing.

23          And by that time, there were a lot of copies  
24          but because the print -- apparently I had put the "16"  
25          instead of page 16 on copies. That's all I can think

1 must have happened. I don't know to this day but that's  
2 all I can guess because I just wanted one page of page  
3 16.

4 Q. Did you distribute those copies to your  
5 students in violation of the directive?

6 A. Oh, absolutely not. Absolutely not. And the  
7 Administration Evaluation Team found that that was just  
8 a mistake, so I'm surprised to find it in here as a  
9 complaint.

10 Q. Tell the Committee what the "Administrative  
11 Evaluation Team" is.

12 A. Well, I -- my Chair asked that I receive an  
13 administrative evaluation due to the very points being  
14 made here, except for the cash handling wasn't in there  
15 at that time. And the three members met and received --  
16 interviewed people, and on that one issue they found  
17 that there was an honest mistake, I wasn't trying to  
18 waste -- the way they had put it, that I was wasting  
19 department materials -- I was attempting to waste  
20 department materials, which I wasn't. And they found in  
21 my favor on that issue.

22 Q. Do you miss not teaching?

23 A. Oh, I do. I love teaching. At the end of  
24 every summer I'm ready to get back in the classroom.

25 Q. You've been placed on administrative leave?

1 A. Yes, I have.

2 Q. Why are you fighting -- why don't you just  
3 retire instead of going through this?

4 A. Because I love teaching. It is a joy of mine.  
5 It is not a big job. It is something I like doing. I  
6 like creating materials and creating the presentation of  
7 mathematical knowledge because I know that's difficult  
8 for people. I enjoy seeing the spark in the student's  
9 eyes. I love this subject and I really enjoy Phoenix  
10 College. I enjoy my students there are who very  
11 diverse. I enjoy my colleagues who are also -- they're  
12 Latinos there and I enjoy my Latino colleagues. I enjoy  
13 all my friends at Phoenix College.

14 The college is a beautiful college. It's a  
15 pleasure for me. It is not a job. It's a pleasure and  
16 I'm not ready yet to retire. I will retire eventually.  
17 I will retire when I'm ready to retire.

18 MR. MONTROYA: I don't have -- yes, please.

19 DR. REYES: Question. How long have you been  
20 on administrative leave?

21 THE WITNESS: This semester.

22 DR. REYES: Just this semester.

23 THE WITNESS: Right from the beginning. I was  
24 told at the end of May by Dr. Solley that I would be  
25 terminated in the fall, and my lawyer at that time said:

1 No, they won't; no, they won't; that would be crazy.  
2 But they did. I got the letter and I've not returned  
3 back to the college.

4 MR. MONTOKA: I don't have any further  
5 questions on direct. Thank you very much.

6 MR. UPPAL: I'd like to take a five-minute  
7 break before I start my cross. It can come out of my  
8 time.

9 CHAIRPERSON CRUDUP: Okay.

10 (Whereupon a recess is taken at 2:49 p.m. until  
11 3:03 p.m.)

12  
13 CHAIRPERSON CRUDUP: We're convened.

14  
15 CROSS-EXAMINATION

16  
17 BY MR. UPPAL:

18 Q. Dr. Martinez, good afternoon.

19 A. Good afternoon.

20 Q. You know who I am. I'm counsel for the  
21 District, with my colleague Shannon Balch. And to  
22 expedite my questioning since it's late in the day, I'm  
23 going to ask you a series of questions and then my  
24 colleague is going to finish up with a few questions  
25 before we pass you back to your own attorney.

1                   And so let me begin by asking you because Mr.  
2                   Martinez -- excuse me. Your own attorney, Dr. Martinez,  
3                   Mr. Montoya asked you about the fact you are under oath.  
4                   Do you remember when he went through that with you a  
5                   little bit?

6                   A.     Yes.

7                   Q.     What's your understanding of being under oath?

8                   A.     I'm required to tell the truth.

9                   Q.     You're required to tell the truth, right? I'm  
10                  not accusing you of anything. I'm just saying you  
11                  understand that you're required to tell the entire truth  
12                  and essentially respond to questions completely and  
13                  honestly, right?

14                  A.     Yes.

15                  Q.     And you're familiar with Dr. Anna Solley -- or,  
16                  I should say President Anna Solley, correct?

17                  A.     Yes.

18                  Q.     She is the President of Phoenix College, right?

19                  A.     Correct.

20                  Q.     And she's also a Hispanic, right?

21                  A.     I think so.

22                  Q.     You don't know?

23                  A.     I just know what I am told and I am told she  
24                  is.

25                  Q.     Is there some doubt in your mind about that

1 issue?

2 A. Well, somebody else told me she was not.

3 Q. Really?

4 A. So -- yeah. So, I --

5 Q. Well, normally I would not even go into this  
6 line of inquiry but since your own attorney asked you so  
7 much about your bilingualism and your heritage, I'm just  
8 wondering whether or not you know if Dr. Solley is the  
9 same national origin and whether she's active in  
10 Hispanic civil rights groups. Do you have any  
11 information about that?

12 A. She is active in civil rights groups.

13 Q. In fact, she's won awards for being in  
14 leadership positions and Hispanic civil rights groups,  
15 hasn't she?

16 A. Yes, she has.

17 Q. And, again, there's really no doubt in your  
18 mind that Dr. Solley is also Hispanic and bilingual is  
19 there?

20 A. I've answered that.

21 Q. Is there any doubt in your mind? I'm sorry. I  
22 didn't get -- I didn't get your answer.

23 A. Yes.

24 Q. You said you doubt it?

25 A. I said that somebody told me that she was not,

1           so now I don't know.

2           Q.    Okay. All right.

3           A.    I don't know.

4           Q.    Who is that someone that told you that she is  
5 not?

6           A.    I don't recall but it was probably several  
7 people.

8           Q.    But it was significant enough to cause doubt in  
9 your mind?

10          A.    Oh, yeah.

11          Q.    Okay. Is there any doubt in your mind about  
12 the fact that Dr. Solley is in a managerial position?

13          A.    No.

14          Q.    Okay. She's basically, as she described, the  
15 CEO of -- the chief operating officer of Phoenix  
16 College. You would agree with that, right?

17          A.    Yes.

18          Q.    You know, when there's a headache with respect  
19 to budgetary issues or problems, it's her problem to  
20 deal with it, right?

21          A.    No.

22          Q.    You're not in a managerial position, right?

23          A.    No.

24          Q.    But you're certainly -- since you're not in a  
25 managerial position but Dr. Solley is, would you agree

1       that Dr. Solley has to take into consideration issues  
2       and facts and problems that really are not encompassed  
3       within your job duties?

4             A.    Yes.

5             Q.    Okay.  So, given Dr. Solley's position as the  
6       President of Phoenix College, do you think that she's  
7       owed any discretion or deference by people that work in  
8       her college, people that report to her?

9             A.    Yes.

10            Q.    How about yourself, do you think you owe her  
11       some deference or discretion or courtesy of following  
12       her directions?

13            A.    Yes.

14            Q.    Okay.  But you haven't done so, have you?

15            A.    No.

16            Q.    "No" meaning you agree with me or you disagree  
17       with me?

18            A.    I agree.

19            Q.    That you have not followed her directions?

20            A.    Well...

21            Q.    If you agree with me, that's what I want the  
22       Committee to know.  If you don't agree, this is your  
23       chance to say otherwise.

24            A.    Well, I disagree -- I don't know whether --  
25       what is true and what is not, and so I guess that's what

1 I'm saying.

2 Q. I'm sorry. I didn't mean to interrupt you.

3 So, I'm going to ask you: Have you finished your  
4 thought or your answer?

5 A. Ask me the question again.

6 Q. Okay. Isn't it true that you have not followed  
7 Dr. Solley's directions and instructions?

8 A. Dr. Solley's? I think I have to the best of my  
9 ability.

10 Q. To the best of your ability. So, isn't it  
11 true -- well, let me retract that.

12 Since you claim that you have followed Dr.  
13 Solley's directions to the best of your abilities, given  
14 her status as the President of the college, how many  
15 cancelled checks have you come here with today?

16 A. I don't have any.

17 Q. All right. And you were told -- you were  
18 instructed unequivocally with respect to this  
19 Cash-Handling Policy -- and bear in mind I'm not asking  
20 you whether or not you agree with the instruction or  
21 not, I'm just asking you, weren't you instructed in  
22 writing to make refunds and produce cancelled checks?

23 A. Yes.

24 Q. And you haven't done so?

25 A. Correct.

1 Q. Ma'am, in this hearing today, would you agree  
2 with me that the witnesses that have come before you  
3 that the Committee -- that it is reasonable for the  
4 Committee to assess their credibility?

5 A. To assess their credibility of the witness?

6 Q. Right. Just because a witness has testified to  
7 something here today, the Committee doesn't have to take  
8 that as a fact, right? The Committee has the ability,  
9 and I would say even the duty, to assess the credibility  
10 of the witnesses?

11 A. Yes.

12 Q. And that includes you, doesn't it?

13 A. Yes.

14 Q. The Committee is not required you6delete to  
15 take you at your word, the Committee is rather charged  
16 with assessing your credibility?

17 A. Is that a question?

18 Q. Yes. You agree with that?

19 A. Yes.

20 Q. Your credibility has to be assessed, does it  
21 not, in the context of your direct insubordination and  
22 direct refusal to comply with President Solley's  
23 directives?

24 A. I'm not agreeing with your use of  
25 "insubordination" or "refusal." I am --

1 Q. Would you prefer "failure"?

2 A. No.

3 MR. MONTTOYA: I would like to object. He's  
4 arguing with the witness instead of asking her about  
5 facts. What happened; what did she do; what did you  
6 think? This is an argument.

7 MR. UPPAL: I'd ask for the same leniency that

8 --

9 CHAIRPERSON CRUDUP: Okay. Yes.

10 MR. UPPAL: Thank you.

11 Q. BY MR. UPPAL: Since you don't like the word  
12 "insubordination," let's use the word "failure." Would  
13 you agree that your credibility has to be assessed by  
14 the Committee in the context of your very recent failure  
15 to comply with Dr. Solley's instructions to you to  
16 produce cancelled checks for the refund -- showing that  
17 you made refunds to the students to whom you sold course  
18 materials that you copied at Staples?

19 A. You're saying I sold them. I did not sell  
20 these.

21 Q. What word would you prefer?

22 A. I got reimbursed for my cost.

23 Q. Let's use your word. Let's use "reimbursed."  
24 Isn't it true that the Committee has to assess your  
25 credibility in the light of your failure to produce

1 cancelled checks in direct violation of President  
2 Solley's directive to you to produce proof in the form  
3 of canceled checks that you had refunded what you like  
4 to call reimbursements. Do you agree with that?

5 A. Well, in discussing this with my students they  
6 did not want this to happen and neither myself nor they  
7 knew what we could do about it.

8 Q. Name every student that said that. Give me the  
9 names.

10 A. I don't have a list of their names.

11 Q. That's right. You don't have the names. But  
12 let's -- let's indulge hypothetically that a couple of  
13 students said to you that they didn't care, you would  
14 have still been told, had you not, that you had to  
15 produced cancelled checks?

16 A. Well, it was a class of students so...

17 Q. Ma'am --

18 A. And Dr. Solley -- I think it was Dr. Kakar if I  
19 remember right that said I was to return the  
20 reimbursement, and I then proceeded to inquire, just be  
21 a little bit more clear with me as to where is this  
22 violation because I have an understanding with the  
23 students; I'm not clear on what's going on, what's the  
24 policy, what's the procedure here at Phoenix College?

25 Q. You are clear, are you not? Because if you're

1 not clear, we'll just go through the instruction.

2 You are clear, are you not, that irrespective  
3 of what you believe, what you feel, or what you contend  
4 these unidentified, unnamed students may have said,  
5 isn't it crystal clear to you and everyone else that you  
6 were told that you had to produce cancelled checks  
7 showing you had made refunds?

8 A. Yes.

9 Q. And you have failed to do so?

10 A. I have not done so.

11 Q. And given that -- and given this failure in  
12 direct contravention of what the President of your  
13 college is asking you to do -- or, not asking, frankly  
14 telling you to do, why -- why do you believe that you  
15 can be trusted as to anything else?

16 A. Well, this is after four-and-a-half years of a  
17 lot of stress and noncommunication from Dr. Solley and  
18 the Administration.

19 And I can certainly be trusted. I've been  
20 trying to work to figure out what is -- what's the issue  
21 here. And even on this particular one, even my students  
22 do not want the money back, they totally agree with me  
23 that we made this arrangement, I -- I would not do  
24 anything I am told. If I was told to jump out of a  
25 window, I wouldn't do that. And I would like to speak

1 with them and I want to cooperate with something that  
2 makes sense, and even some things that don't make sense.  
3 It doesn't make sense that I wasn't able to use  
4 Exhibit 4 when Garrison -- nobody found anything wrong  
5 with it and I used the same textbook. That doesn't make  
6 sense but I have obliged by it. But I did make -- I did  
7 not follow this particular directive and I think it's  
8 the only one I have not yet followed.

9 Q. So, if it's only one directive, even though  
10 it's in writing, if it's only one, is this like a free  
11 dog bite or something where you get one chance and you  
12 shouldn't be held to the consequences because according  
13 to you -- let's indulge your hypothetical. This is the  
14 first time that you have violated something, let's  
15 assume that is the case. Does that give you a free  
16 get-out-of-jail card?

17 A. Well, I think what that should do is allow me  
18 to communicate and allow the Administration to  
19 communicate back to me about this particular situation  
20 and address the points that I've brought up and asked  
21 for. I asked for: Show me the policies that I am  
22 breaking here; show me where it describes this because  
23 I'm not really clear about it. And if I -- I want to  
24 help my students make copies of something that they're  
25 going to go spend money on, how is that done? And if it

1       can't be done, why can't we just do it at the school?  
2       The school pays for faculty copies. It's not clear to  
3       me. The whole thing is a big muddle in terms of why  
4       won't you make copies of these materials? I want to  
5       understand so that I, in the future, will know which  
6       ones I can get copies of at Icon or copy center and  
7       which documents I cannot.

8           Q.    Is there some sort of rule or faculty manual or  
9       policy, something that you can point to or identify,  
10      that gives an instructor such as yourself the right not  
11      to follow the President -- a written instruction of the  
12      President of the college because you don't agree with  
13      it? There's nothing like that, right?

14      A.    No.

15      Q.    You do understand that whether you agree with  
16      the directive from the President or not, you have to  
17      follow it?

18      A.    And, you know, after all this time I think I  
19      should have and then continued to follow my -- my path  
20      and try to find out, what is it that is wrong with this  
21      picture here? What could -- what is the policy that --  
22      I still don't know the policy that I've broken or the  
23      procedure. I don't know how to better do this. And  
24      I've continued to ask: Why won't you make copies of  
25      this? Where is the procedure/policy at Phoenix College?

1 And I have not been -- that question has not been  
2 answered.

3 Q. How does any of that excuse you from failing to  
4 produce the cancelled checks?

5 A. I think that was a mistake.

6 Q. On your part?

7 A. Yes.

8 Q. I just want to make this clear. Are you saying  
9 it was a mistake on President Solley's part or a mistake  
10 on your part?

11 A. I think -- right now I think I've made a  
12 mistake.

13 Q. When did you come to this realization that you  
14 made a mistake?

15 A. I've not been clear about it. I'm really not  
16 clear right now, but I'm thinking right now -- I just  
17 want to move on. I'm going to acknowledge this is a  
18 mistake and --

19 Q. My question --

20 A. -- we can move on.

21 Q. I'm sorry. I made -- now I made a mistake. I  
22 didn't mean to talk over you. Please finish your  
23 answer.

24 A. Well, we all make mistakes and this is a  
25 mistake I made. I think.

1           Q.    Okay.  So you have made a mistake with respect  
2           to your failure -- you're acknowledging that you made a  
3           mistake with respect to your failure to follow President  
4           Solley's instruction to you in writing to produce  
5           cancelled checks showing that you made refunds, right?

6                     Just a yes or no.  You're acknowledging that's  
7           a mistake on your part?

8           A.    I think so.

9           Q.    You think.  So there's still some doubt in your  
10          mind?

11          A.    Well, I don't know this for sure but I believe  
12          it is a mistake.

13          Q.    So, when did you come to this realization?  
14          Just in the last five minutes while I was  
15          cross-examining you?

16          A.    Well, I've never been clear about it.

17          Q.    Ma'am, my question --

18          A.    I'm not clear.

19          Q.    Ma'am, my question is:  When did you come to  
20          this realization that you made a mistake?

21          A.    I have not been clear.  I don't know if it  
22          really is or if it's not.  But for the purposes here, I  
23          will acknowledge that it's a mistake.

24          Q.    When did you come to that realize?

25          A.    Right now I'm acknowledging.

1 Q. Right. So, if it took you -- how long has this  
2 thing been going with the Cash-Handling Policy?

3 A. Six months.

4 Q. Six months. During that time you've received a  
5 lot of e-mails and written instructions about what to do  
6 and how to make refunds to students, right?

7 A. Yes.

8 Q. So, this has been going on for six months but  
9 you only come to this realization within this last split  
10 second?

11 A. Well -- and still -- still I haven't received  
12 any policy or procedure from the Cashier's Office, from  
13 anybody at Phoenix College, the President, Vice  
14 President, the Dean, nobody has given me any feedback.  
15 It's like do what we say; if we say jump, just jump and  
16 forget about how high or whatever.

17 Q. Well -- well --

18 A. So, I'm willing to do that right now. And I'm  
19 going to find out -- I really want to find out why we  
20 can't make copies of this.

21 Q. It's taken you this long to acknowledge that  
22 you made a mistake in not comply with Dr. Solley's  
23 directives that you still haven't complied with, even  
24 though all of this, according to you, has been going on  
25 for at least six months. Given what you just said, how

1       can Dr. Solley trust you to comply with any of her  
2       instructions if it takes you six months on this simple  
3       point?

4           A.    I follow -- I follow every instruction.  This  
5       is the only one I had a question on that -- and I  
6       don't -- I didn't have an easy way of finding out the  
7       answers.

8           Q.    Now, did you testify in response to your  
9       attorney's questioning and is it still your position  
10      that the District reached out to students and somehow,  
11      you know, belittled you or defamed you or said something  
12      improper with respect to your violation of the  
13      Cash-Handling Policy before they talked to you about it?

14          A.    That's what the students told me.  That's the  
15      first news I had about it.  I didn't know about it until  
16      they told me and they asked what was going on.

17          Q.    Take a look at Exhibit 35.  Do you have it in  
18      front of you?

19          A.    No.

20          Q.    I'll give you a copy.

21                DR. REYES:  Would you please clarify what  
22      semester it was you made the copies of this at Staples?

23                THE WITNESS:  The copies at Staples were made  
24      in the fall of 2012, one year ago.

25                DR. REYES:  Thank you.

1 Q. BY MR. UPPAL: So, really, this issue about you  
2 making the refund and you're violating the Cash-Handling  
3 Policy, this has been going on for at least a year,  
4 right? Not six months?

5 A. I wasn't notified about it. I didn't know  
6 about it until the end of the semester.

7 Q. I want to direct your attention to Exhibit 35.  
8 And this is in the binder for the Committee at  
9 Exhibit 35. This was an e-mail from the Math Department  
10 Chairman. It says: -- I'm not going to read the whole  
11 thing -- it says: "Dear Students, it has come to my  
12 attention that Dr. Martinez, math faculty, may  
13 have sold you instructional material she's not  
14 authorized to have such materials printed."  
15 And then it references the District's Cash-Handling  
16 Policy, and, again, I'm not going to read it. But  
17 what's the date of this?

18 A. April 4th, 2013.

19 Q. Actually, I'd like for you to read the date of  
20 the e-mail below.

21 A. November 28th, 2012.

22 Q. You had already been talked to about the  
23 Cash-Handling Policy by November 28th, 2010 [sic], when  
24 Phoenix College reached out to the students, isn't that  
25 right?

1           A.    I don't remember.

2           Q.    Okay. Are you still going to maintain your  
3 position that the District somehow reached out to the  
4 students about cash handling and tried to cast you in a  
5 bad light in light of this November 28th, 2012, e-mail?  
6 Is that still your position?

7           A.    Say that again.

8           Q.    Is it still your position -- now that you've  
9 seen this notice in writing dated November 28, 2012, to  
10 students, you have it before you, are you still going to  
11 maintain your claim that the District or Phoenix College  
12 reached out to students and tried to belittle you or  
13 take advantage of you or cast you in a bad light before  
14 talking to you?

15          A.    I don't know when they first contacted me.

16          Q.    Okay.

17          A.    So, I can't tell.

18          Q.    Could you pass back that exhibit, Dr. Martinez?

19          A.    Uh-huh.

20          Q.    Thank you.

21                So, ma'am, since you don't remember when the  
22 District first contacted you about the cash-handling  
23 issue, I want to show you Exhibit 3. I'll give it to  
24 you in a second.

25                MR. UPPAL: I want to direct the Committee's

1 attention to Exhibit 3, as well.

2 DR. REYES: What Tab is that under?

3 MR. UPPAL: Tab 3. All the exhibits we have  
4 are corresponded to the Tab numbers.

5 Q. BY MR. UPPAL: Dr. Martinez, what is the date  
6 of this Corrective Action?

7 A. October 18th, 2012.

8 Q. Okay. And I don't mean to be flippant about  
9 this, but you agree with me that October 18th, 2012,  
10 proceeds November 18th, 2012, by more than a month,  
11 right?

12 A. Oh, okay. Yes.

13 Q. Now, have you paid so little attention to this  
14 cash-handling issue that you've actually forgotten that  
15 you received a Corrective Action in October 18th of  
16 2010?

17 A. Absolutely not. I've been so bombarded by  
18 data, by e-mails, and phone calls and all this -- that  
19 kind of behavior, that it's all jumbled sometimes. It's  
20 hard to keep all this stuff straight. So, it was not  
21 intentional. I can see now when it happened.

22 Q. Professor, you're a math instructor, aren't  
23 you?

24 A. I sure am.

25 Q. Aren't you used to data? Aren't you used to

1 processing large volumes of data?

2 A. Absolutely. This is not a mathematical  
3 problem.

4 Q. Okay. But you had forgotten that you not only  
5 were talked to but you were actually put on a written  
6 Corrective Action before Phoenix College reached out to  
7 the students with respect to the refunds? You forgot,  
8 is that your contention?

9 A. Okay. When you attack me, I'm getting -- I get  
10 shaken up. Say it again.

11 Q. Would you like to take a break, ma'am?

12 A. No. I would like you to say it again and I'll  
13 try to listen to words and not the delivery.

14 Q. You testified in response to your -- by the  
15 way, nothing that your own attorney asked you shook you  
16 up, did it?

17 A. No.

18 Q. Okay. And he asked you some rather complicated  
19 questions, didn't he?

20 A. Yes.

21 Q. And --

22 A. I guess. I don't know.

23 Q. In response to one of your questions under  
24 oath, you notified the Committee that -- you testified  
25 to the Committee that Phoenix College had reached out to

1 students and cast you in some sort of bad light before  
2 even discussing the cash-handling issue with you, right?

3 A. Well, you know, I don't think this is  
4 discussing. This is just giving me a statement and we  
5 never discussed this, so there's been no discussion.  
6 This is the way the District has spoken to me. This is  
7 how this Administration has spoken to me, in letters  
8 like this that are read to me for the first time and  
9 then I'm trying to make sense out of them. And when I  
10 ask for clarification, I either get the same statements  
11 restated to me in this language, but never a discussion.  
12 There's been no discussion.

13 Q. There's been no discussion about your violation  
14 of a Cash-Handling Policy with you?

15 A. No discussion.

16 Q. Did you hear Dr. Kakar testify that not only  
17 was there a discussion with you, but hat Dr. Kakar and  
18 Dr. Solley, the woman who is the President of Phoenix  
19 College and has better things to do, took the time to  
20 meet with you in person to explain your cash-handling  
21 violation?

22 A. This is what happened --

23 Q. No. My question is and then you can explain  
24 what happened.

25 A. Okay. All right.

1 Q. Do you recall Dr. Kakar testifying about that?

2 A. Yes, I do.

3 Q. Is Dr. Kakar a liar on that issue? Because we  
4 can have President Solley testify about that as well.

5 A. I don't want to call anybody names.

6 Q. Terrific. Isn't it true that Dr. Kakar testify  
7 that you walked out of that meeting while they were  
8 trying to have a discussion with you?

9 A. She did testify to that.

10 Q. And did you, in fact, walk out?

11 MR. MONTOKA: Now he's interrupting the  
12 witness.

13 Q. BY MR. UPPAL: Did you, in fact, walk out is  
14 the question?

15 A. I did walk out.

16 Q. As they were trying to have a discussion with  
17 you?

18 A. No. They were not having a discussion with me,  
19 that's the whole thing. I was in that meeting and for  
20 the first time in my life, what the meeting consisted of  
21 was Dr. Solley or Dr. Kakar, I can't remember which now,  
22 read an agreement to me, and then at the end of that  
23 reading of it asked that I sign the last page. I  
24 refused to sign it. I said: This is the first time  
25 I've looked at it, I'm not really clear what it says.

1 I'm under a lot of stress right here because they did  
2 not allow me to bring somebody else to this meeting,  
3 quote, "meeting." And I said I want to be able to think  
4 about this and look at it more carefully before I sign  
5 anything.

6 Then they pressured that: What was it that was  
7 bothering me, and I mentioned some of the point -- a  
8 point; and they said: We'll scratch that out and then  
9 sign it. And I said, no, I'm not clear on this yet.  
10 And they kept urging me and it was even threatening.  
11 I'm afraid of Dr. Solley, she can cause me a lot of  
12 harm. And they insisted that I sign and they kept  
13 reading the same material over and insisting that I  
14 sign. And I wanted to discuss it and they said they're  
15 not there to discuss, that they were there for me to get  
16 this and sign it.

17 And I said: Well, I -- I said: I feel  
18 threatened; I'm afraid here; I haven't read this yet  
19 clearly and in a calm place, and I said I need to leave.  
20 And they said: But you need to sign it, you need to  
21 sign it right now. And then I walked out. There was  
22 nothing else I thought could be gained from that.

23 Q. Let me get this straight. You're afraid of  
24 President Solley but, yet, you're not so afraid as to  
25 violate her written instructions to make refunds. Is

1           that about right?

2           A.    I am afraid of Dr. Solley, I'm sorry.

3           Q.    Wow. Given this fear, what gave you the  
4           bravery to violate her instructions?

5           A.    I didn't -- I didn't want to violate. That was  
6           not my intention. My intention was Dr. Solley, Dr.  
7           Kakar, somebody, show me the policy that you are saying  
8           I violated. Because the policy that I am shown  
9           addresses theatre, athletics, the Cashier's Office, and  
10          doesn't address this. I'm not clear about it. Why have  
11          I not been allowed to make a copy of this through Icon?  
12          Where is the procedure or the policy that described what  
13          can be copied and what cannot be copied? Please speak  
14          to me. I want to follow policy and procedure. I want  
15          to know what needs to be done. And there was no  
16          response to that. No discussion at all.

17          Q.    Did you give this speech before or after you  
18          walked out of the meeting?

19          A.    Well, during the meeting I said: I want time.  
20          I said: I have not seen this document before this  
21          moment and you have just read it to me, I want some time  
22          to read it carefully and understand what it says. And  
23          then discuss it with you; and I was told no.

24          Q.    When you walked out, did you take this  
25          Corrective Action dated October 18th, 2012, with you?

1           A.    Whatever was given to me in my hand I did walk  
2 out with.

3           Q.    And then since you wanted time to read it,  
4 certainly when you walked out you must have read it?

5           A.    Well, actually, I didn't read it.

6           Q.    So, you didn't even bother to -- you didn't  
7 bother to read it right away?

8           A.    Well, I was very terrified, shaken up. So, no,  
9 immediately I did not step outside and start reading.

10          Q.    When did you read it?

11          A.    I needed to calm down and I don't remember  
12 exactly.

13          Q.    Days later? A month later?

14          A.    Oh, no. I mean, as soon as I was able to feel  
15 safe and feel unshaken up by it, I read it.

16          Q.    So, I want a timeline here. You walked out of  
17 the meeting with President Solley who had taken her time  
18 to meet with you and you claimed you are afraid of her,  
19 and then you took the October 18, 2012, directive --  
20 just looking for the time here, not a speech -- how much  
21 time after you walked out of that meeting, how long did  
22 it take you to actually read this Corrective Action?  
23 I'm just looking for an estimate. You know, two hours?  
24 Two days? Five days?

25          A.    Mr. Uppal, I don't recall.

1 Q. Because you didn't read it, did you?

2 A. Of course I read it.

3 Q. Okay. Well, let's read it now. Let's turn to  
4 this Exhibit at Bates label Martinez 02250 and I want to  
5 direct your attention to the third sentence of the  
6 section that says "Non-Compliance." And read along with  
7 me.

8 A. Wait a minute. I'm not clear.

9 Q. Ma'am.

10 A. Oh, the second page.

11 Q. I'm going to point to it just so we're on the  
12 same page. So are you on --

13 A. The second page.

14 Q. -- 02250?

15 A. Yes, okay.

16 MR. UPPAL: Okay. Just in the interest of  
17 time, Mr. Montoya, if it's all right with you, I'm just  
18 going to point her to where we are at.

19 MR. MONTOKYA: Sure.

20 THE WITNESS: I know where we are.

21 MR. UPPAL: I just want to show you a sentence,  
22 ma'am.

23 If that's okay? With your permission. Do you  
24 prefer I not? I can sit down.

25 MR. MONTOKYA: You can point to it. You're

1           okay. You're being polite.

2           Q.    BY MR. UPPAL: Starting right there, ma'am.

3           A.    Okay.

4           Q.    So I just want you to read silently along with  
5 me. I just want you to tell the Committee if I read it  
6 correctly.

7                   It sates: "Because you imposed charges on the  
8 students without authority to do so, you have a  
9 responsibility to reimburse the students from  
10 your own funds. You are hereby directed to do  
11 so by personal check beginning immediately and  
12 continuing until all students who paid you are  
13 reimbursed."

14                   Do you see that? Did I read it correctly?

15           A.    Yes.

16           Q.    Okay. And then we've already established you  
17 didn't do that.

18                   Are you aware that subsequent to your not  
19 following that instruction, some attempts were made to  
20 see whether or not you had, in fact, contacted students  
21 to give them refunds?

22           A.    Well, I didn't -- I disagree with that  
23 statement. I didn't impose charges on the students.

24           Q.    Ma'am, I think we're way past that point.

25           A.    Okay.

1           Q.    We'll stipulate to the fact that you don't  
2           agree. I think everyone understands that here. You  
3           don't agree with what you were instructed to do. That's  
4           not the point.

5           A.    I didn't impose charges on the students, that's  
6           what I'm saying.

7           Q.    Ma'am, I understand. We have a different point  
8           of view on that. That's not what I'm asking you. Okay?

9           A.    Uh-huh.

10          Q.    My question now is, that after receiving that  
11          instruction, are you aware that attempts were made to --  
12          by Phoenix College to contact students to inquire  
13          whether or not you had followed that instruction to make  
14          refunds?

15          A.    You're asking if I'm aware of that?

16          Q.    Yes.

17          A.    Now I'm aware of it.

18          Q.    Does that indicate to you the level of  
19          seriousness with which the college and Dr. Solley  
20          treated this cash-handling violation?

21          A.    Yes.

22          Q.    Okay.

23          A.    It is very serious.

24          Q.    There's an e-mail at Exhibit 39 from a Kelly  
25          Loucks. Who is Kelly Loucks, by the way?

1 A. He is the secretary of the Math Department.

2 Q. Okay. Kelly Loucks has an e-mail at Exhibit 39  
3 which states out of -- and it's dated January 9, 2013.

4 It says: "Out of 52 total contacts between  
5 messages and speaking with students, only one  
6 had confirmed receiving the refund. Twenty  
7 others had indicated they had not received a  
8 refund from the instructor."

9 Do you have any basis to agree or disagree with  
10 that?

11 A. I've never seen that e-mail.

12 Q. Would you like to see it?

13 A. Sure.

14 Q. Okay.

15 THE WITNESS: May I speak with my lawyer?

16 MR. UPPAL: Not -- well, I'm going to defer to  
17 the Committee, but the general rule -- and I'm actually  
18 going to ask Mr. Calderon what his view is on this is,  
19 but the general rule is you don't get to take a break  
20 and speak with your attorney in the middle of  
21 questioning.

22 MR. CALDERON: Mr. Chairman, may I ask the  
23 witness a question? May I ask the witness a question?

24 CHAIRPERSON CRUDUP: Yes.

25 MR. CALDERON: Dr. Martinez, are you -- I mean,

1 is this an emotional thing you need to talk to him or  
2 are you talking to him about the case? Don't tell me  
3 specifically what it is. Are you seeking advice from  
4 him?

5 THE WITNESS: I am feeling very badly and I  
6 would like to continue and I think if I speak to my  
7 lawyer I might be able to feel better about coming in  
8 and returning.

9 MR. UPPAL: I tell you what. I'm just going to  
10 go ahead despite in light of what the witness has said,  
11 normally this would not be allowed, because -- I want to  
12 explain why I have a hesitation to this. My hesitation  
13 to this is when a witness takes a break in the middle of  
14 being questioned and speaks to her attorney, that  
15 witness can tailor her testimony to the questioning  
16 instead of giving the complete and truthful questions  
17 [sic]. That's why I had reservation about it and I  
18 still do, but I'm going to withdraw it because I don't  
19 want Dr. Martinez to feel or her attorney to argue that  
20 she asked for a break and then wasn't given it.

21 So, I'll just withdraw my objection and let her  
22 speak with her attorney.

23 MR. CALDERON: Mr. Chairman, if you're willing  
24 to allow a break, I would allow maybe a two- or  
25 three-minute break. And Mr. Montoya is an officer of

1 the court, he knows he can't coach her while she's on  
2 the stand. But if perhaps the two of them can just talk  
3 about the non-substantive part to the extent they can.  
4 I don't see a problem with that.

5 CHAIRPERSON CRUDUP: A brief break. Two  
6 minutes.

7 (Whereupon a recess is taken at 3:37 p.m. until  
8 3:39 p.m.)  
9

10 MR. MONTROYA: She's just a little -- just a  
11 little tired. You know, it's getting -- she's under a  
12 lot of stress, she's not used to being  
13 cross-examined. Pavneet and I are used to this but  
14 she's not, so she's a little under the weather and  
15 little tearful. But, go ahead.

16 THE WITNESS: Okay. I don't remember the  
17 question.

18 MR. UPPAL: I'm going to go ahead and withdraw  
19 the last question and ask a different one.

20 Q. BY MR. UPPAL: So, during this course of trying  
21 to get you to comply with the directive to issue refunds  
22 as set forth in the Corrective Action that you received,  
23 did you at some point tell students that you would give  
24 them a refund but that they had to give back the  
25 materials to you?

1 A. No.

2 Q. Okay. I want to show you --

3 A. I don't recall that happening.

4 Q. Okay. So, I want to show you an e-mail from  
5 yourself to Elizabeth Pati dated January 16, 2013. And  
6 the Committee will note that these are the same, you  
7 know, sequence of e-mails that are Exhibit 39 to the  
8 District's submission.

9 So, Dr. Martinez, I've actually drawn an arrow  
10 to try to expedite this. Do you see that you had --  
11 that you sent an e-mail from you to an Elizabeth Pati on  
12 Wednesday, January 16, 2013, at 7:16 p.m. Do you see  
13 that?

14 A. Yes.

15 Q. Okay. And do you see in the third paragraph  
16 you wrote: "Since you wish to have your money back, you  
17 should return the hard copy"?

18 A. Yes.

19 Q. So you were imposing the condition that before  
20 you gave a refund that you were directed to give, you  
21 were requiring the hard copy to be returned?

22 A. Yes.

23 DR. CAIRE: Which exhibit is that?

24 MR. UPPAL: Sir, that is -- if you go to MCCD  
25 Exhibit 39, you will see a series of e-mails. And if

1       you tab through to the e-mail from Dr. Martinez to a  
2       student named Elizabeth Pati that Dr. Martinez sent it  
3       on January 16, 2013.

4               MS. BLACH: I believe it's the third page from  
5       the back of that exhibit.

6               MR. UPPAL: That might be easier to find it.

7               Q. BY MR. UPPAL: By the way, this student, Ms.  
8       Pati, had made clear to you that she had wanted her  
9       money back, didn't she?

10              A. Yes.

11              Q. In fact, she wrote to you by e-mail on  
12       December 6th, 2012, telling you that she wanted her  
13       refund and understood it would be in check form?

14              A. May I see that?

15              Q. Sure. So, Dr. Martinez, I want to direct your  
16       attention to this e-mail. I've drawn an arrow just to  
17       expedite matters. Again, the Committee will note that  
18       this is another e-mail at Exhibit 39.

19              Do you see that there's an e-mail from an  
20       Elizabeth Pati to you where she address you as: "Dear  
21       Dr. Martinez" that Ms. Pati sent on December 6th, 2012?

22              A. Yes.

23              Q. And she wrote, that is Ms. Pati: "At the  
24       beginning of this semester fall of 2012, I  
25       purchased a book from you for \$11. I was given

1 a letter today stating that if any student  
2 purchased a book that we were entitled" -- it's  
3 misspelled, but it's entitled -- "to a refund."  
4 Do you see that?

5 A. Yes.

6 Q. Wasn't it clear to you that at least this  
7 student believed that she had purchased a book from you?

8 A. Well, that's what she had been told apparently  
9 by the Administration, because I certainly never ever  
10 said that to her at all. And you will note I told  
11 her -- by this time, this was now in December, I -- by  
12 December then, I guess, the Administration had written  
13 her the other letter and I -- I just figured, okay. And  
14 I had talked with Mr. Combs because I wanted to know  
15 from Mr. Combs, well, what about just getting my  
16 material back?

17 MR. MONTROYA: Can I raise a point with the  
18 Committee? We're supposed to end at 4:40. I've only  
19 had the opportunity to call one witness, my client. We  
20 basically admitted that she has never paid this money  
21 back and she's repeatedly told you why. So, he's  
22 choosing to go on and on and on about something that  
23 we've admitted and I should not be penalized for that.  
24 I got two individuals who are waiting in the witness  
25 room. One is one of your colleagues and the another one

1 is Fred Bellamy. And he hasn't even got to the  
2 copyright issue yet. There has to be a time limit  
3 imposed upon him, otherwise these guys have come here  
4 for nothing and that's really unfair.

5 He called three witnesses. I should be able to  
6 call three witnesses, too.

7 CHAIRPERSON CRUDUP: How much more time do you  
8 think you have?

9 MR. UPPAL: I think we're close to wrapping up  
10 on -- on this issue.

11 MR. MONTOKYA: It's not only this issue that I'm  
12 concerned about. I consider the copyright issue to be a  
13 more important issue that's going to take more time.

14 MR. UPPAL: Now, that's a speech and --

15 CHAIRPERSON CRUDUP: Just continue.

16 MR. UPPAL: Right.

17 Q. BY MR. UPPAL: So, let's turn then --

18 CHAIRPERSON CRUDUP: Five more minutes, okay?

19 MR. UPPAL: Okay. Five more minutes for this  
20 subject or entirety?

21 CHAIRPERSON CRUDUP: To complete.

22 MR. UPPAL: To complete this subject or this  
23 witness?

24 The reason I'm asking is because Mr. Montoya  
25 was the one saying cross-examination does not count

1       against the allotment, it counts against the person who  
2       called the witness.

3               MR. MONTOYA: If -- if you're not wasting your  
4       time.

5               DR. REYES: May I ask a question?

6               MR. MONTOYA: And I went through my witness  
7       very rapidly because I was looking at the clock.

8               DR. REYES: Mr. Montoya, would you give us an  
9       estimate of about how much time you need for each  
10      witness?

11              MR. MONTOYA: For the two witnesses out there,  
12      I can tell you probably 20 minutes apiece. And that  
13      is -- that's cutting all the fat and some meat to boot.

14              DR. REYES: And -- okay. And that would  
15      include cross-examination?

16              MR. MONTOYA: No, that's not -- I have no idea  
17      what he's -- especially the way he is asking questions  
18      here, he could take -- we could be here until 8:00.

19              DR. REYES: Could we estimate 20 minutes for  
20      your questions of each of your witnesses, 20 each?

21              And cross-examination, how much would you  
22      estimate that would be for each? For each witness?

23              MR. UPPAL: I would estimate, ma'am, it would  
24      be approximately similar. But here's the tough part, I  
25      don't know what they're going to say. For example, if

1       they come to you and say something that's completely  
2       false, it may take a while for me to extract that from  
3       them.

4               MR. MONTTOYA: And I didn't know what his  
5       witnesses were going to say.

6               DR. REYES: For the sake of time, would we be  
7       able to move things along and assume we'll take, say,  
8       five more minutes here and then 20 minutes per witness  
9       with 10 to 15 of cross-examination each?

10              MR. UPPAL: If you can give me ten minutes,  
11       we'll do our best to comply with that. I don't think I  
12       can sit with five -- or, comply with five, but we could  
13       do ten.

14              DR. REYES: And you both understand that will  
15       impact the amount of time you have for closing  
16       statement?

17              MR. MONTTOYA: I don't understand that, with all  
18       due respect. And I object to that with all due respect.  
19       Because every time with -- and I'm not criticizing the  
20       Committee, but every time he's always one more minute,  
21       two more minutes, five more minutes, it's always that.  
22       And my client is the one whose suffers for it and I  
23       think that is chronically unfair. Especially since I  
24       think you have been crystal clear that, hey, if you  
25       waste time, it's your time, you're going to lose it.

1 MR. UPPAL: Well, if the Committee were to  
2 count up the minutes that Mr. Montoya has used on  
3 objections --

4 MR. MONTOKYA: And you, too.

5 MR. UPPAL: No, I don't think there's any rough  
6 equivalency on that.

7 DR. REYES: May I suggest that we stop arguing  
8 about it and move on with your next five minutes.

9 MR. UPPAL: Thank you. Yes, ma'am.

10 Q. BY MR. UPPAL: So, to expedite things a little  
11 bit hopefully, do you remember receiving an e-mail from  
12 Cassandra Kakar on which Dr. Solley was copied, this is  
13 at Exhibit 39, January 11th, 2013, where you were  
14 instructed because you imposed charges on your students  
15 without authority to do so, you have the responsibility  
16 to reimburse the students from your own funds: "You are

17 hereby directed to do by personal check  
18 beginning immediately and continuing until all  
19 students who paid you are reimbursed."

20 Do you remember getting that instruction?

21 A. Yes.

22 Q. Okay. Now, earlier -- turning to a different  
23 subject -- you testified that your students love you.  
24 Isn't it true that you've received some rather harsh  
25 assessments on Rate My Instructor?

1 MR. MONTOYA: Objection. That is irrelevant.

2 MR. UPPAL: Well, I will withdraw it if Mr. --

3 MR. MONTOYA: And moreover -- I wasn't done --  
4 if you look at Statement of Charges, it is not in there.  
5 It is not in there. And this proceeding, I think your  
6 counsel will agree, is limited to what she has notice of  
7 in the Statement of Charges. If it's not in there, we  
8 need to move on and conclude.

9 MR. UPPAL: Here's my response: You can't  
10 elicit testimony from your witness informing the  
11 Committee that the students love you and then take  
12 offense or claim that there's some sort of exclusion  
13 when that very point is disputed. But, I'm going to  
14 move on on that. But I direct the Committee to  
15 Exhibit 43 and you will see the absolutely abysmal  
16 reviews that Dr. Martinez has received from students;  
17 but, I won't question about her about it.

18 DR. CAIRE: I have a question. Can you  
19 substantiate that all the comments here are really from  
20 students?

21 MR. UPPAL: No, sir. Good point. And I will  
22 concede the point. It's Rate My Professor and it is  
23 what it is. So, your point is well-taken.

24 MR. MONTOYA: And it's nothing. It's just  
25 slander and a smear job.

1 MR. UPPAL: Was that an objection? Was that a  
2 debate or argument?

3 MR. MONTTOYA: It is an objection. It is an  
4 objection because that is wrong to be able to  
5 anonymously slander someone without any attribution.  
6 That is completely wrong especially when it's not in the  
7 Statement of Charges. How do we know --

8 MR. UPPAL: Okay.

9 MR. MONTTOYA: -- that wasn't done by her  
10 ex-boyfriend?

11 MR. UPPAL: Sir, since you raised the question  
12 and given the speech that Counsel has made, I'll direct  
13 you to Exhibit 36, where there's no dispute that a  
14 Joseph Hobson, a student, on December 11, 2012,  
15 explicitly sends an e-mail to the Math Department  
16 Chairman Mr. -- or, Dr. Sueyoshi, and he's so  
17 disappointed with her that he says, quote: "I would  
18 like the opportunity to retake this class with a  
19 different instructor if possible."

20 Anyway, I'm done. My point is you can't on one  
21 hand contend the students love and on the other hand  
22 shirk away from the fact that many of them don't.

23 THE WITNESS: I'd like to make a statement.

24 MR. UPPAL: Objection.

25 MR. MONTTOYA: He brought it up.

1 MR. UPPAL: She can make a statement on her own  
2 time.

3 MR. MONTROYA: She has the right to defend  
4 herself.

5 MR. UPPAL: There's no question pending. If  
6 she's going to make a statement, it should be on  
7 redirect.

8 MR. MONTROYA: Well, she's the one who -- okay.

9 MR. UPPAL: All right. So thank you. I'm  
10 going to now pass the witness to my colleague.

11 MR. MONTROYA: I object to that.

12 MR. UPPAL: I announced this at the beginning.  
13 She's going to wrap this and use --

14 MR. MONTROYA: Well, wait a --

15 DR. REYES: One and a half minutes.

16 MR. UPPAL: -- the remaining time I have  
17 allotted.

18 DR. REYES: One and a half minutes.

19 MR. MONTROYA: Okay. For one and a half  
20 minutes.

21

22 FURTHER CROSS-EXAMINATION

23

24 BY MS. BLACH:

25 Q. I just have a couple of questions for you, Dr.

1 Martinez. First of all, you testified earlier that you  
2 tried to speak with Maggie McConnell and Lee Combs  
3 regarding copyright issues but they refused to speak  
4 with you?

5 A. Yes.

6 Q. Did I hear you correctly?

7 A. Yes.

8 Q. Well, Dr. Martinez, at Exhibit -- around 23,  
9 isn't it true that you met with Maggie McConnell  
10 regarding copyright issues?

11 A. I don't recall that.

12 Q. Did you have a discussion with her regarding  
13 copyright issues?

14 A. What type of discussion are you talking?  
15 Electronic or --

16 Q. Well, I'll have you take a look at Exhibit 25.  
17 That states: "As we discussed" -- and this is from  
18 Maggie McConnell to you dated January 28, 2010, to you,  
19 stated: "As we discussed today, it is inappropriate to  
20 copy anything from copyrighted source and  
21 reproduce it without the written permission of  
22 the copyright holder."

23 So, Maggie McConnell, in-house counsel, did, in  
24 fact, speak with you regarding copyright issues?

25 A. Yes. Yes, she did. That was by telephone.

1           Q.   And, similarly, Lee Combs and Maggie McConnell  
2 discussed --

3           MR. MONTOYA:  It is time.

4           Q.   BY MS. BLACH:  -- copyright issue at --

5           MR. MONTOYA:  It's over time.  I move that this  
6 stop and that I be allowed to proceed with my case.  
7 They're using all of my time.  That hurts me, that hurts  
8 my client.  How is that far?

9           MR. UPPAL:  This is the same individual, Mr.  
10 Montoya, who insisted that cross-examination time counts  
11 against the witness -- counts against the lawyer who  
12 called the witness; now he is complaining.

13          MR. MONTOYA:  Well, yeah, the --

14          DR. REYES:  We are getting down to the last  
15 minutes.

16          MR. MONTOYA:  She is -- the Committee said you  
17 had a minute and a half and you used it.  It's long  
18 over.

19          MS. BLACH:  I'll conclude with one last  
20 question.

21          Q.   BY MS. BLACH:  Dr. Martinez, isn't it true that  
22 earlier today you testified that the students were not  
23 required to buy this textbook in your Math 182 spring  
24 2010 course?

25          A.   No.

1 Q. Didn't you tell that to the Hearing Committee  
2 earlier today?

3 A. That they were not -- no, I didn't say that.

4 Q. Wasn't it your testimony that you said students  
5 were required to buy it in fall of 2009, but you did not  
6 require them to buy this book in spring of 2010?

7 A. Yes. They were not required to buy that  
8 particular textbook, they had to buy a different  
9 textbook.

10 MR. MONTROYA: Okay. She's done.

11 MS. BLACH: Thank you.

12 CHAIRPERSON CRUDUP: On that last question,  
13 everything that you've been presenting, I'm familiar  
14 with. I've read it, they've read it. So, we'll see  
15 what they have to say.

16 MR. MONTROYA: I'm going to just do one. When  
17 -- when --

18 MR. UPPAL: Well, I -- is this time going to  
19 come out of his testimony time with his witnesses?

20 MR. MONTROYA: Yeah. I have no problem with  
21 that.

## REDIRECT EXAMINATION

BY MR. MONTOYA:

Q. Now, remember when you were trying to say something when Pavneet read something from some student?

A. Yeah. Right.

Q. Go ahead and say it.

A. The complaint that came out on December 11th was the result of I was hospitalized that fall. I had a pulmonary embolism in both lungs and I was hospitalized. I was out. I was not allowed to go back to work for, I think, a two-week period. And my Chair then would call me and say: What are you going to do about this, students are complaining? And I told them: I'm in the hospital, or I'm in -- or, I'm recuperating.

And so the students were upset because the Chair did not take care of my classroom, I guess, to a -- in a way that they felt would be appropriate. It wasn't me at all. I wasn't even there. And that's -- that's where the complaint generated from, my not being in class and conducting the class. They were upset that it wasn't running well or something. But that wasn't my job, I was in the hospital.

MR. MONTOYA: May I call my next witness?

CHAIRPERSON CRUDUP: Yes.

1                   MR. MONTROYA: I'm going to have to leave the  
2 room and go fetch him.

3                   (Whereupon the witness enters the hearing  
4 room.)

5  
6                   MR. MONTROYA: May I proceed?  
7 Please swear the witness.

8  
9                   FREDRIC D. BELLAMY,  
10 called as a witness herein, having been first duly  
11 sworn, was examined and testified as follows:

12  
13                   DIRECT EXAMINATION

14  
15 BY MR. MONTROYA:

16               Q. Mr. Bellamy, good afternoon.

17               A. Good afternoon.

18               Q. And what is your profession?

19               A. I am an attorney.

20               Q. How long have you been admitted to the practice  
21 of law, sir?

22               A. Since 1986.

23               Q. And where did you go to college?

24               A. I went to college at Harvard University.

25               Q. When did you graduate?

1 A. 1983.

2 Q. And did you graduate with any honors?

3 A. Yes, I did. I graduated cum laude in my field  
4 of concentration.

5 Q. And what was your field of concentration?

6 A. Psychology and social relations.

7 Q. And upon graduating from Harvard, what did you  
8 do next educationally?

9 A. I then attended Harvard Law School.

10 Q. Is that a difficult school to gain acceptance  
11 to?

12 A. Yes.

13 Q. And did you attend -- how long did you attend  
14 Harvard University?

15 A. Seven years all together. Four years for my  
16 undergrad degree and three years for law school.

17 Q. When you were at Harvard Law School, did you  
18 take any courses regarding the subject of intellectual  
19 property?

20 A. You know, I actually don't recall.

21 Q. Okay. And after you graduated from Harvard Law  
22 School, what did you do next?

23 A. I accepted a job as an attorney, as an  
24 associate at a law firm called Brown & Bain in Phoenix,  
25 Arizona.

1 Q. And what year was that?

2 A. That was 1986.

3 Q. And did Brown & Bain have a firm focus in  
4 reference to its practice?

5 A. Yes. At that time, it was considered among the  
6 pre-eminent litigation firms for intellectual property  
7 cases.

8 Q. And Jack -- and Brown & Bain was founded by an  
9 individual that we both met, had the pleasure of meeting  
10 named Jack Brown; is that correct?

11 A. That is correct.

12 Q. Isn't it true that Jack Brown, if you look him  
13 up, was one of the pre-eminent intellectual lawyers in  
14 the United States?

15 A. Yes. In fact, I remember the National Law  
16 Journal referred to him as the Dean of the  
17 High-Technology IP Bar.

18 Q. How long did you work at Brown & Bain?

19 A. Five years.

20 Q. And what area of law did you concentrate in at  
21 Brown & Bain?

22 A. I principally did intellectual property and  
23 litigation focusing on copyright litigation.

24 Q. How many years have you been in practice at  
25 this time?

1 A. Oh, let's see. It's been over 25 years.

2 Q. Do you still concentrate on intellectual  
3 property and copyright matters?

4 A. Yes. I mean, my practice has, you know,  
5 expanded in breadth to other forms of complex business  
6 litigation, I would call it. But intellectual property  
7 and technology-related matters, both advising clients  
8 and litigating them, remains a focus of my practice.

9 Q. Isn't it true that you are the Former Chairman  
10 of the State Bar of Arizona Intellectual Property  
11 Section?

12 A. Yes. That's true.

13 Q. Isn't it true that you are the Former Chairman  
14 of the State Board of Arizona E-Commerce, Internet, and  
15 Technology Law Section?

16 A. Yes, that's true.

17 Q. Isn't it true that you are the Founding  
18 Chairman of the Technology Committee of the Executive  
19 Council of the State Bar of Arizona, Young Lawyers  
20 Division?

21 A. Yes.

22 Q. Isn't it true that you are listed in America's  
23 Best Lawyers?

24 A. Yes.

25 Q. Isn't it true that you regularly counsel

1 clients regarding intellectual property matters?

2 A. Yes.

3 Q. Do you remember meeting a lady who is sitting  
4 to my right whose name is Cleopatria Martinez? She came  
5 to you seeking your counsel regarding a copyright  
6 matter?

7 A. Yes, I met her.

8 Q. Did you know her?

9 A. Not before she came to me for some intellectual  
10 property advice.

11 Q. Do you usually counsel individuals, academics,  
12 regarding intellectual property matters?

13 A. No.

14 Q. Why did you agree to see her?

15 A. You know, I sympathized with her -- with her  
16 issues and it struck me that although I could understand  
17 the concern from a copyright infringement point of view,  
18 that there was a bit of what I considered in my judgment  
19 an overreaction and delete to a very fixable problem.

20 You know, the problem in particular with the  
21 Fair Use Doctrine, because it's -- to call it an  
22 ambiguous, difficult, and evolving area of the law would  
23 be an understatement. It's the kind of area where in  
24 some situations -- I mean, clearly, there are always  
25 going to be edge cases, extreme cases where you know any

1       number of copyright lawyers would agree, but there are  
2       many, many situations where in the Fair Use Doctrine  
3       there's going to be disagreement. It's a real source of  
4       ambiguity and confusion.

5           Q.    Let me ask you this: Tell the Committee how  
6       much you charged Professor Martinez for your advice when  
7       she first met you?

8           A.    I decided to take the case pro bono.

9           Q.    Do you usually do pro bono work for college  
10      professors?

11          A.    No.

12          Q.    Why did you decide to take it pro bono, her  
13      particular case?

14          A.    As I said, I thought it was -- you know, I  
15      sympathized with her situation. I thought there was a  
16      legitimate, you know, case to be made that what she'd  
17      done fell within the boundaries of fair use, recognizing  
18      that it's not really possible or legitimate to have a  
19      definitive opinion. But I thought on balance that this  
20      really went to the core of, you know, of what fair use  
21      is really fundamentally about, which is education. Not  
22      for profit, not for commercial uses, but for in large  
23      part protecting the ability of teachers and professors  
24      to teach in an appropriate manner and to do some degree  
25      of copying within those parameters.

1 Q. And it's true that the Fair Use Doctrine is  
2 codified in the Copyright Act, isn't it?

3 A. Yes, it is.

4 Q. And is that Section 107?

5 A. Yes.

6 Q. Does the first sentence of Section 107 read:  
7 "The fair use of a copyrighted work for  
8 purposes such as criticism, comment, news  
9 reporting, teaching (including multiple copies  
10 for classroom use), scholarship, or research,  
11 is not an infringement of copyright"?

12 A. Yes. That is what it says.

13 Q. Now, tell the Committee, under the Fair Use  
14 Doctrine do you have to get the publisher's approval or  
15 authorization to use it in order to fall within the Fair  
16 Use Doctrine?

17 A. No, no. The whole point of the doctrine is  
18 that you don't need permission.

19 DR. REYES: Question, please?

20 MR. MONTTOYA: Please.

21 DR. REYES: Sources must be cited, correct?

22 THE WITNESS: From an academic point of view,  
23 that's -- I would consider that to be a matter of  
24 politeness and to avoid issues related to plagiarism,  
25 but it isn't in the copyright doctrine.

1 MR. MONTTOYA: And that's an important point,  
2 because she's not been accused of plagiarism, she's been  
3 accused of copyright violation.

4 Q. BY MR. MONTTOYA: So, let me ask you this  
5 because there's been some testimony to the contrary,  
6 isn't it true that the very purpose of fair use is so  
7 you don't have to get the person's permission?

8 A. Yes.

9 Q. Isn't it true that in fair use litigation,  
10 authors and publishers sue because they've withheld,  
11 intentionally, permission and sometimes the Court says  
12 too bad, you lose anyway, it was a fair use?

13 A. Yes. That's correct. In fact, there's a  
14 recent opinion, it's really a landmark opinion in a case  
15 brought by -- a class action brought by writers and  
16 publishers against Google, which Google literally they  
17 copied, they literally copied over 20 million books, and  
18 many publishers and writers had not given permission,  
19 and the Court last week ruled that that was fair use.

20 Q. Have you been on Google Books?

21 A. Yes.

22 Q. Have you noticed that some books are copied  
23 almost in their entirety?

24 A. Yes. Yes. In fact, I use Google Books for my  
25 own research in the practice of law.

1 Q. Now, you reviewed some materials that Professor  
2 Martinez provided you before you rendered your written  
3 opinion of December 16, 2010, right?

4 A. Yes, that's correct.

5 Q. Now, Professor Martinez will testify that the  
6 materials that you reviewed are in front of you as  
7 Exhibits 1 and 2. They're her lecture notes. Do those  
8 look familiar to you?

9 A. Yes, they do.

10 Q. And, now, let me ask you a threshold question.  
11 Mathematical formulas, mathematical calculations,  
12 geometric figures, geometric calculations, are those  
13 even subject to copyright?

14 A. The actual formulas which would be considered  
15 the equivalent of the laws of nature are not  
16 copyrightable.

17 Q. So, 156 squared times 942 minus 147, is that  
18 copyrightable?

19 A. No.

20 Q. Because it's an intellectual? It's a pure  
21 idea? It's a law of nature?

22 A. Exactly.

23 Q. So, does copyright have a different application  
24 in reference to the field of mathematics than it would  
25 have in reference to the field of religious studies or

1 poetry or history?

2 A. Yes, absolutely. The distinction is what  
3 copyright does not do is protect ideas which would  
4 include, you know, simple laws of nature. Pythagorean  
5 Theorem, you can't copyright the Pythagorean Theorem,  
6 for example.

7 Now, there's a spectrum of what's protectable  
8 under copyright law, as there is in all forms of  
9 intellectual property law, where the expression of ideas  
10 receives the maximum protection. So if you write a  
11 play, say, that's going to be entitled to maximum  
12 protection. But a mathematical equation would be at the  
13 lowest end of the spectrum where it would not be  
14 protectable in and of itself.

15 Q. Now, why did you conclude that the -- well, let  
16 me ask you this: If you -- under the Fair Use Doctrine,  
17 if I copy a few pages out of a book, out of a math book,  
18 but I also have bought the math book, does that take it  
19 away from fair use? Do I have to buy the source in  
20 order to fairly use the source or copy the source?

21 A. No. In the abstract. But, again, we're  
22 talking about a doctrine that is not susceptible to  
23 definitive analysis. There's no magic formula to say  
24 this is fair use and this isn't. You have to -- you  
25 have to construe it in the context of a case-by-case

1 basis and with knowledge of what the purpose of what the  
2 Copyright Act is and what the purpose of the Fair Use  
3 Doctrine is.

4 Q. Isn't it true that the purpose of the Copyright  
5 Act is essentially the advancement of knowledge?

6 A. Yes. It's -- you know, it states that right in  
7 the U.S. Constitution and the Constitution itself  
8 reflects, as the Copyright Act does, that there's an  
9 attempt to balance the need for freedom of  
10 communication, expression, and idea to discriminate that  
11 because that's the public benefit; but there's also the  
12 needs to balance that for the needs of the creators to  
13 basically be able to sell and make a living off of  
14 creating works.

15 Q. Isn't it true that under the Fair Use Doctrine  
16 you don't even have to buy the book to fairly use the  
17 book within certain limitations?

18 A. Yes, that's true.

19 Q. Isn't it true that's the purpose of the Fair  
20 Use Doctrine?

21 A. Yes, absolutely.

22 Q. Now --

23 CHAIRPERSON CRUDUP: About five more minutes.

24 MR. MONTTOYA: Okay.

25 Q. BY MR. MONTTOYA: Why did you -- okay. After

1       you reviewed the materials that Professor Martinez  
2       submitted to you, isn't it true that you concluded that  
3       they fell within the Fair Use Doctrine?

4           A.    Yes.   In my opinion, they do.

5           Q.    And isn't it true that you rendered that  
6       opinion before you and I had even spoken about  
7       Cleopatria Martinez?

8           A.    Yes, that's correct.

9           Q.    Isn't it true that you rendered that conclusion  
10      before anyone even paid you a cent?

11          A.    Absolutely.

12          DR. REYES:   Could I ask a clarification  
13      question?

14          MR. MONTOYA:   Of course.

15          DR. REYES:   Were the materials reviewed by  
16      yourself and Mr. Garrison -- I'm not sure of if you're  
17      aware of what he reviewed, were they the same materials?

18          THE WITNESS:   You know, I can't be sure at this  
19      point.   I did read Mr. Garrison's opinion and I believe  
20      he had more materials to look at than I did, but I can't  
21      state that definitively based on my recollection.

22          MR. MONTOYA:   Mr. Bellamy didn't have 3 and 4.

23          MR. UPPAL:   Objection.   Objection.   This is not  
24      proper.

25          MR. MONTOYA:   Well --

1 DR. REYES: That was a clarification.

2 MR. UPPAL: But what he's saying is not proper.  
3 He's not allowed to testify and I object to him  
4 testifying.

5 MR. MONTROYA: Well --

6 MR. UPPAL: What he's going to do? Ask himself  
7 a question and answer it?

8 MR. MONTROYA: Okay. Well, then I'll get that  
9 testimony in when I recall her.

10 MR. UPPAL: So, for an individual who's  
11 complained there's no time, I don't know how he's going  
12 to recall.

13 MR. MONTROYA: Well --

14 MR. UPPAL: -- and if he's going to recall  
15 witnesses, I certainly am as well.

16 CHAIRPERSON CRUDUP: Move on.

17 Q. BY MR. MONTROYA: Now, why did you conclude that  
18 the materials that are in front of you given to you by  
19 Professor Martinez fell within the Fair Use Doctrine of  
20 copyrights?

21 A. Well, there are -- there's no definitive  
22 formula, as I said, to determine where the Doctrine  
23 applies, but there are four predominant factors that are  
24 codified within the statute and that are referred to in  
25 the -- in the case law construing the Fair Use Doctrine.

1 And in my analysis, the balance of those factors weighed  
2 in favor of the conclusion that it was fair use.

3 First, there's the purpose and character of the  
4 materials that are being copied. And here we -- we  
5 have -- you know, in my review of what appeared to be  
6 mainly trigonometry and other pre-calculation formulas,  
7 these are -- these are at the lowest end of the  
8 spectrum, they are in and of itself on an item-by-item  
9 basis not copyrightable.

10 That, doesn't mean the textbook sources, if  
11 someone writes a math book, that the book itself is not  
12 copyrighted, the book is because it's a compilation of  
13 -- and contains original expression and descriptions of  
14 how to use the formulas and so forth.

15 But when I looked at the, you know, class notes  
16 that Dr. Martinez provided me, it appeared to be  
17 principally, you know, snippets of math problems, math  
18 formulas, math equations. So, that itself, you know,  
19 militates in favor of application of the Fair Use  
20 Doctrine because it's a lower -- it's a lower level of  
21 protection in the first instance.

22 In terms of the purpose for which she was using  
23 it, it goes to the core of the Fair Use Doctrine which  
24 is to promote its use by teachers in an academic setting  
25 for the purpose of learning.

1           We also look to the amount of the materials.  
2           And, you know, I believe by, you know, my impression and  
3           understanding was that we are looking at a totality of  
4           say less than 1 percent, maybe even less than one-half  
5           of 1 percent out of the universe from which some of  
6           these equations were drawn. So, it's a relatively  
7           insignificant amount in the scheme of things compared to  
8           the entirety of the book. So, that's another factor  
9           that in my opinion weighed in favor of applying the Fair  
10          Use Doctrine as an affirmative defense to the claim of  
11          infringement.

12                 Also look to the -- you know, the probable  
13          impact on the commercial market for the copyright owner.  
14          And based on my understanding of how these materials  
15          were used, that it would not have a significant impact.  
16          I'm not saying it couldn't have any impact, but it did  
17          not appear to be something that would really ultimately  
18          hurt the copyright owners in the marketplace.

19                 So taking those factors together, it appeared  
20          to be a --

21                 CHAIRPERSON CRUDUP: Out of time.

22                 MR. UPPAL: All right.

23                 MR. MONTROYA: I'd like to --

24                 MR. UPPAL: So I'd like to now begin my  
25          cross-examination.

1 MR. MONTTOYA: Mr. Chairman, I would like to do  
2 something with my time. I would like to proceed with  
3 this witness and not take any more time but, in fact,  
4 just relieve my last witness of any testimonial duties.  
5 So, it won't prolong anything because I really believe  
6 in my opinion that this witness's testimony is more  
7 important and I'd rather have him finish his testimony  
8 than to have the other witness testify. So, it won't --  
9 it won't cause any more time.

10 MR. UPPAL: I object to that. He's been -- Mr.  
11 Montoya has complained ad nauseam today about too much  
12 time being taken and cutting into his cross-examination  
13 time, and he was warned not once but twice by the  
14 Committee to wrap it up, and so now he should bear the  
15 consequences. I'm ready to cross-examine the witnesses.

16 DR. REYES: May I, Mr. Chairman? Are you  
17 asking for an additional 20 or your final 20 minutes  
18 will be spent with this witness?

19 MR. MONTTOYA: Yeah. My final 20, yeah, and  
20 waive my other witness. And I think that some of that  
21 time will actually go to Mr. Uppal's benefit.

22 DR. REYES: Okay.

23 MR. MONTTOYA: Because I don't have 20 minutes  
24 more with him.

25 CHAIRPERSON CRUDUP: Okay. We'll go that way.

1 MR. UPPAL: Can we -- in light of that ruling,  
2 though, can we get a definitive stop time for Mr.  
3 Montoya? Because previously it was five minutes. I  
4 just want to know what it's extended to.

5 DR. REYES: 20 minutes.

6 MR. MONTOKYA: Okay.

7 MR. UPPAL: Well, if he carries 20 more  
8 minutes, then I definitely will not have an equal time  
9 to cross-examine Mr. Bellamy. I mean, we can look at  
10 the clock assuming that's correct.

11 DR. REYES: How much more time do you think you  
12 need?

13 MR. MONTOKYA: Maybe 12 minutes.

14 CHAIRPERSON CRUDUP: 12 more minutes and then  
15 cross.

16 Q. BY MR. MONTOKYA: Before you were interrupted,  
17 go ahead.

18 A. Okay. You know, just to sum up, so we look at  
19 these factors, the purpose and character of the copying  
20 which is done for an educational purpose for teaching;  
21 we look at the impact on -- the probable impact on the  
22 market and that, again, is an analysis that you can't  
23 really do in a vacuum, but my understanding is that the  
24 impact would not be substantial; we look at the amount  
25 which is -- which is very key, I mean, if -- and hearing

1 the amount on a percentage basis is small, although you  
2 can't define it in a mathematical -- there's no specific  
3 threshold mathematically when is it too much.

4 Again, you have to construe each of the factors  
5 for purposes of the Fair Use Doctrine, which is promote  
6 the use of copying essentially up to a certain point for  
7 the purpose of teaching because we don't want to have  
8 too much constraint on essentially academic freedom for  
9 teachers to be able to pull source materials for  
10 educational purposes.

11 Q. Isn't it true, Mr. Bellamy, that the language  
12 of the statute in reference to any legal question is of  
13 paramount importance?

14 A. Yes. Absolutely.

15 Q. Isn't it true that what Professor Martinez did  
16 making multiple copies for classroom use of somebody  
17 else's work is expressly protected in the very first  
18 sentence of Section 107, the fountainhead of fair use  
19 authority?

20 A. Yes. I completely agree with that.

21 Q. Did that impact -- is that one of the reasons  
22 why you concluded?

23 A. Yes. Yes, it was precisely because she is a  
24 professor, a mathematic professor, who is using  
25 materials in the manner that the Fair Use Doctrine is

1 intended to protect.

2 Q. Now, if you were a judge, would you conclude  
3 that Professor Martinez's use of these materials fell  
4 within the Fair Use Doctrine?

5 MR. UPPAL: Objection. This is not a proper  
6 question because if this witness were a judge, then the  
7 rules of hearsay would apply, the rules of disclosure  
8 would apply, and a whole host of rules would apply that  
9 there's no way that Mr. Bellamy can fairly answer this  
10 question. There's no foundation for it if he were the  
11 judge.

12 CHAIRPERSON CRUDUP: Just continue.

13 Q. BY MR. MONTOYA: You can answer.

14 A. Within the confines of what I reviewed and my  
15 understanding of the situation, yes, if I were to be  
16 authorized to give a judicial opinion, I would conclude  
17 that it's fair use. It doesn't mean that there aren't  
18 other factors that I'm not aware of that could change  
19 that calculation.

20 Q. Let me ask you this: You mentioned at the  
21 threshold of the Authors Guild versus Google opinion, do  
22 you agree with it?

23 A. Yes, I do. I think it reflects the important  
24 policy behind the Fair Use Doctrine.

25 Q. Isn't it true that if the Authors Guild versus

1        Google case is correct, then it's an easy case in  
2        reference to what Professor Martinez did to conclude  
3        that, of course, it's protected by the Fair Use  
4        Doctrine?

5                MR. UPPAL: Objection. Lack of foundation.

6                MR. MONTOYA: I'm asking as an expert witness.

7                MR. UPPAL: He doesn't know everything. He's  
8        already said -- he's already said he's not aware of  
9        anything.

10               MR. MONTOYA: Well, he as6delete has to  
11        answer --

12               MR. UPPAL: Wait a minute. I want to get my  
13        objection on the record. He's already testified about  
14        five times now that he's not aware of everything that  
15        Dr. Martinez did. So any opinion that he gives on this  
16        subject is not based on anywhere near complete  
17        information. This is according to his testimony. So,  
18        this is an inappropriate question.

19               MR. MONTOYA: Let me rephrase it and I'll limit  
20        it.

21               Q.    BY MR. MONTOYA: Isn't it true that if the  
22        Google decision is correct, then the two booklets that  
23        you reviewed for Professor Martinez clearly fall within  
24        the Fair Use Doctrine?

25               MR. UPPAL: Same objection.

1 THE WITNESS: Yes. In my opinion it would be  
2 covered by the policy analysis in the Google opinion.  
3 And based on the relatively insignificant amount of  
4 copying and the educational purpose coupled with the  
5 fact that as the Court acknowledges in the Google case,  
6 Google makes billions of dollars in it's business model.  
7 But this is a classroom, this is a non-profit situation.

8 Q. BY MR. MONTTOYA: And isn't it true on Google  
9 Books, like sometimes 90 percent of the book is  
10 reproduced?

11 A. Yes.

12 Q. Did Professor Martinez produce 90 percent of  
13 the textbook?

14 A. No.

15 Q. You said it was less than .5 percent?

16 A. Yes.

17 Q. Is it easy for a layperson proceeding in good  
18 faith to run afoul of the Fair Use Doctrine?

19 A. Yes. Very easy, unfortunately.

20 MR. MONTTOYA: I don't have any further  
21 questions. Thank you, sir.

22 THE WITNESS: You're welcome.

23 MR. MONTTOYA: Less than 12-6delete minutes. So  
24 the amount of time I saved, I hope I get credit for.

25 MR. UPPAL: I'm going to go ahead and proceed

1 with the Committee's permission.

2 CHAIRPERSON CRUDUP: Proceed.

3  
4 CROSS-EXAMINATION

5  
6 BY MR. UPPAL:

7 Q. Mr. Bellamy, good evening. I know it's late in  
8 the day. I know you're here on behalf of Ms. Martinez,  
9 but thank you for -- for coming here today.

10 A. You're welcome.

11 Q. Your credentials are certainly impressive, sir,  
12 and I'm not taking issue with them, but I do have a --

13 A. Thank you.

14 Q. -- question since Mr. Montoya made such an  
15 issue with it. Are you taking any issue with Mr.  
16 Garrison's credential? Are you claiming you're a  
17 superior lawyer to him in anyway?

18 A. No, no. We've participated together in Bar  
19 activities and so forth. I'm certainly aware of him and  
20 respect him as a fellow colleague.

21 Q. Certainly. That's exactly what I would expect.  
22 I wouldn't expect anything different. You respect him  
23 and he respects you. But you're a lawyer for -- you're  
24 an expert witness and basically an advocate for Dr.  
25 Martinez, right?

1 A. No, I -- well --

2 Q. Well, you're an expert witness?

3 A. No -- yes, I am, but my opinions are my  
4 opinions.

5 Q. Okay. Fair enough.

6 But you have your own clients, right?

7 A. Yes.

8 Q. And your clients take their advice from their  
9 lawyers not from the expert witness of whoever they may  
10 be having a problem with. You agree with that, right?

11 A. Sure.

12 Q. So, in the case, the District has to rely on  
13 the opinion and the advice of Mr. Garrison, not the  
14 counter expert, right?

15 A. Well, I can't speak to the nature of that  
16 relationship, but...

17 Q. No, doesn't that just make common sense to you  
18 in light of your own practice? Clients rely on their  
19 own lawyers for own advice and not the opposition's  
20 lawyers?

21 Come on, sir, you would concede that, wouldn't  
22 you?

23 A. Yes. I can see.

24 Q. That's what I was really looking for. It  
25 wasn't a trap or trick of any kind.

1 A. Sure.

2 Q. You already told us -- well, I don't want to  
3 put words in your mouth. You could concede, because I  
4 think you've conceded now several times that Mr.  
5 Garrison reviewed different and a much larger quantity  
6 of materials than you did, right?

7 A. That is apparently the case, yes.

8 Q. It's more than apparently the case. You agree  
9 with that, don't you?

10 A. As far as I can recall, yes.

11 Q. Okay. And so you certainly are in absolutely  
12 no position -- not because of your qualifications,  
13 because I'm not challenging those, but because you  
14 didn't review the same materials or the same quantity of  
15 materials that Mr. Garrison reviewed, you're in no  
16 position to render an opinion on materials that you  
17 never reviewed, right?

18 A. I did review the analysis that Mr. Garrison put  
19 forward and --

20 Q. That wasn't my question.

21 MR. MONTROYA: He's interrupted the witness.

22 Q. BY MR. UPPAL: Here's my question: If you  
23 didn't review a particular set of lecture notes, then  
24 you have no basis to render an expert opinion on that,  
25 would you?

1           A.    That's correct.

2           Q.    Okay. And you, in fact, did not review the  
3 lecture notes for a class that Dr. Martinez taught which  
4 is MAT 082?

5           A.    I believe that's the case, yes.

6           Q.    Okay. And are -- that's probably enough on  
7 that.

8                   Let's turn to your two-page letter of  
9 December 16, 2010. The Committee saw it because it's in  
10 the materials and we had it on screen and PowerPoint,  
11 too. It said the materials -- this is what you wrote  
12 and I can show it to you, but I think you're going to  
13 remember. Let me know if you want to see it.

14          A.    Okay.

15          Q.    You said: "The materials you sent me include  
16 your spring 2010 lecture notes for MAT 182  
17 trigonometry, as well as pages from the  
18 required textbook that contain similar math  
19 problems and that discuss the subjects on which  
20 you lectured."

21                   When you use that phrase -- do you remember  
22 saying that, by the way?

23          A.    Yes.

24          Q.    Now, you use the phrase -- these are your words  
25 again, I'm not trying to trick you or anything -- "the

1 required textbooks," what is your understanding or what  
2 did you mean when you used that phrase?

3 A. If I recall correctly, and it may not have been  
4 the best choice of words, but I understood that that was  
5 a textbook that was being used in that class.

6 Q. So, the --

7 A. I understand from reading Mr. Garrison's  
8 opinion and some of the other materials, that my  
9 understanding may not have been correct.

10 Q. Right. And, in fact, you weren't here but Dr.  
11 Martinez testified that from MAT 182 she required  
12 students to buy a particular textbook, the one that's at  
13 issue from Sullivan & Sullivan in 2009, but not in 2010.

14 A. Okay.

15 Q. So, in fact, your report contains a  
16 misstatement then, doesn't it?

17 A. Well, I couldn't call it a report. It wasn't  
18 intended to be an expert report.

19 Q. I absolutely agree. You -- you are so right.  
20 It's not an expert report. Your two-page letter  
21 contains a misstatement. Doesn't it?

22 A. It contains a misunderstanding.

23 MR. UPPAL: Okay. Mr. Montoya, could I?

24 MR. MONTROYA: Yeah.

25 MR. UPPAL: Thank you.

1 MR. MONTROYA: Sure.

2 MR. UPPAL: Appreciate it.

3 MR. MONTROYA: No problem.

4 Q. BY MR. UPPAL: I don't know if you can read  
5 that, I wanted to go ahead and show you --

6 MR. UPPAL: And, actually, Steve, can I impose  
7 on you, I think we've got it memorized, to maybe  
8 erase...

9 MR. MONTROYA: You want me to move?

10 MR. UPPAL: No. If you wouldn't mind erasing.

11 MR. MONTROYA: If they -- I don't want to erase  
12 their work without their permission.

13 MR. UPPAL: Well, I think -- is that all right?

14 MR. MONTROYA: Is that all right?

15 MR. UPPAL: Because I think that's been  
16 superceded at this point.

17 CHAIRPERSON CRUDUP: It's okay.

18 MR. MONTROYA: Okay.

19 MR. UPPAL: Thank you, Steve. I appreciate it.

20 MR. MONTROYA: Sure.

21 Q. BY MR. UPPAL: So, this is the two pages that  
22 you submitted, right?

23 A. Yes.

24 Q. And even you say, I think I got this  
25 mislabeled, I got it labeled as a report, but I think

1       you just said yourself it really is not a report, right?

2           A.    No, I was asked to do -- I mean, I asked her,  
3       you know, Dr. Martinez's attorneys at the time who had  
4       contacted me, to coordinate what they were looking for,  
5       did they want a full-blown analysis and report or -- and  
6       they said just an informal letter with your opinion,  
7       which is what I provided.

8           Q.    So, what you provided is -- is not really what  
9       you would provide for a client that wants an expert  
10      opinion?

11          A.    It wouldn't be -- if a client wanted a formal  
12      expert opinion, no.

13          Q.    Okay. And, therefore, what you wrote in these  
14      two pages, wouldn't you agree with me it's not nearly as  
15      exhaustive or reliable as when you prepare a formal  
16      report in the nature that Mr. Garrison produced?

17          A.    Well, it's certainly not as detailed.

18          Q.    Okay. Did you try to understand -- I'm sorry.  
19      What was that word again that you used? I asked you if  
20      your report contained a misstatement whether a textbook  
21      was required and you preferred to a different term. I  
22      want to use your term. You said it wasn't a  
23      misstatement, it was a misunderstanding?

24          A.    Yes.

25          Q.    Okay. Is there any other misunderstandings in

1           your report -- excuse me, your letter?

2           A.     Not that I'm aware of.

3           Q.     Okay. Did you try and compare the lecture  
4 notes that Dr. Martinez gave you with copyrighted  
5 textbooks to try to determine for yourself how much of  
6 the copyrighted materials she took was incorporated into  
7 her lecture notes?

8           A.     If you're asking me if I dived down to that  
9 level of analysis, no, I didn't.

10          Q.     In fact, you didn't even make an attempt, did  
11 you?

12          A.     Meaning what? I did review the textbook.

13          Q.     Well, let's back up for a second. You agree  
14 with me that the textbooks that we have in front of us  
15 are copyrighted, right? There's really no doubt about  
16 that.

17          A.     Yes. Of course.

18          Q.     Okay. And so you also understand from your own  
19 clients, Dr. Martinez that when she came to you, that  
20 the District had expressed concerns -- whether you agree  
21 with them or not -- is it your understanding that the  
22 District had expressed concerns that the materials she  
23 was using in her lecture notes might constitute  
24 copyright infringement?

25          A.     Yes, that's my understanding.

1           Q.    Okay.  So, then, certainly, you must have taken  
2           the lecture notes which are appended to Exhibit 6 of Mr.  
3           Garrison's report -- the ones that you did review,  
4           because I know that you didn't review all of them.  The  
5           ones that you did review, certainly, you must have taken  
6           those lecture notes which, you know, are 50 to 60 pages,  
7           and tried to undertake analysis for example with the  
8           Sullivan & Sullivan book, and see how much -- what  
9           percentage, how much, what substantiality of the lecture  
10          notes are taken from copyrighted books, but you didn't,  
11          did you?

12          A.    I don't understand the question.

13          Q.    Well, let's look at this chart in Mr.  
14          Garrison's report which you've read.

15          A.    Uh-huh.

16          Q.    Since you've read the report you know what he  
17          did, which is he created these charts.  And here's just  
18          one example of it -- by the way, this is from MAT 082,  
19          this is the one you never even tried to analyze, right?

20          A.    I'll take your word for it.

21          Q.    Well, no, I want your word for it.  I think  
22          you've already said this.  I just want to be clear --

23          A.    Okay.  Okay.

24          Q.    You agree?

25          A.    I'm just not -- I haven't memorized the Bates

1 numbers for different documents, that's my point.

2 Q. But you never saw the lecture notes for MAT  
3 082, basic arithmetic 082, because I will tell you Dr.  
4 Martinez already testified she didn't give them to you.

5 A. Okay.

6 Q. All right. So, since you read Mr. Garrison's  
7 report you see that he created three columns.

8 A. Uh-huh.

9 Q. And he created these charts which basically  
10 have a comparison, which he testified was not  
11 exhaustive, in which he cited in the first column on the  
12 left two pages from Dr. Martinez's lecture notes, and in  
13 the middle he showed where it had been copied, and then  
14 on the third column to the right he showed the location  
15 from and the copyrighted book from which the materials  
16 were lifted. You're familiar with that, right?

17 A. Yes.

18 Q. Did you try to do that?

19 A. No.

20 Q. Right. So, you don't really know how much --  
21 well, actually, let me withdraw that question.

22 Which textbooks did you review?

23 A. Sitting here today I can't recall.

24 Q. Because you reviewed none of them. Isn't that  
25 right?

1           Sir, you're here claiming you're an expert and  
2           I certainly agree that you have the qualifications for  
3           an expert, but given that you're testifying as an  
4           expert, certainly you must have taken a review of these  
5           textbooks but you don't remember.

6           A.    I don't have the documents in front of me.  I  
7           do recall looking at the original source material that  
8           was identified to me --

9           Q.    Which one?

10          A.    -- and comparing it.

11                I can't tell you sitting here now.

12          Q.    Well, sir, how am I supposed to cross-examine  
13          you?  Mr. Montoya is claiming time is that, you know,  
14          time is of the essence and is very limited to time and  
15          we have to be over with today, and you're claiming that  
16          in your opinion it was fair use, but you're unable to  
17          tell the Committee which books you looked at?

18          A.    Unfortunately, this was a number of years ago  
19          and it was at -- I was at a different firm and I do not  
20          have my file with me.

21          Q.    Well, Mr. --

22                CHAIRPERSON CRUDUP:  Five more minutes.

23          Q.    BY MR. UPPAL:  Well, Mr. Garrison does remember  
24          and Mr. Garrison actually created these very detailed  
25          charts for the Committee which he said was not

1       exhaustive, which he finds one instance after another of  
2       verbatim or almost verbatim copying. You don't take  
3       issue with his conclusion that the copies were verbatim,  
4       right?

5           A.    No.

6           Q.    In fact, you're not in a position to do that  
7       because you didn't try and undertake that analysis?

8           A.    In my opinion, that level of analysis based on  
9       my understanding of the amount of material and the  
10      nature and purpose of fair use is unnecessary. It's  
11      over kill.

12          Q.    What, if your nature -- what if your  
13      understanding of the nature of the amount that Dr.  
14      Martinez misappropriated is incorrect? You have nothing  
15      to stand on then, right?

16          A.    Look, there are always going to be edge cases.  
17      If someone -- you know, you know, fair use doesn't mean  
18      an academic can take wholesale a textbook.

19          Q.    I'll withdraw the question in light of my  
20      limited time.

21               MR. MONTROYA: You can't interrupt the witness.

22               MR. UPPAL: It was non-responsive.

23               MR. MONTROYA: Well, that's for the Committee to  
24      judge.

25               CHAIRPERSON CRUDUP: Allow. You can finish.

1 THE WITNESS: I also, you know -- assuming  
2 everything that Mr. Garrison says is correct, I do not  
3 reach the same opinion. But his ultimate opinion is not  
4 an infringement opinion, it simply states that there is  
5 a heightened risk because of copying. Well, that's  
6 inherent to any fair-use situation because there's  
7 always copying involved.

8 Q. BY MR. UPPAL: How can you possibly render an  
9 opinion on fair use let alone what Mr. Garrison said  
10 when you don't even remember the source materials that  
11 you reviewed?

12 A. I'm sitting here relying on my recollection of  
13 the analysis I did at the time.

14 Q. And isn't it true that you didn't even try to  
15 review the entire copyrighted textbooks that are at  
16 issue, at most what you reviewed was selective pages  
17 that were given by Dr. Martinez; isn't that right?

18 A. Yes, that's correct.

19 Q. Okay. So, you've got an individual who comes  
20 to you, who wants an opinion basically stating that she  
21 didn't commit copyright infringement, and she gives you  
22 self-selected sections or pages of a textbook to compare  
23 against her lecture notes. You don't find that  
24 problematic?

25 A. No, not particularly.

1 Q. You would agree with me, do you not -- I mean,  
2 let me back up for a second.

3 You understand that Dr. Martinez is here today  
4 in a due process hearing that is to address whether or  
5 not her employment will continue with the District,  
6 right?

7 A. I have some understanding of that, yes.

8 Q. Okay. And you can see that she has an interest  
9 in continuing her employment, right?

10 A. I would assume so, yes.

11 Q. And you don't think there's any issue with the  
12 fact that you only reviewed selected pages that she  
13 selected?

14 A. I have no reason to doubt that she -- she's in  
15 the best position to tell me what the source materials  
16 are and to make that comparison, and that was what I was  
17 asked to do.

18 Q. Okay. And since you don't remember what you  
19 reviewed, you don't remember the textbooks, and you  
20 conceded you only reviewed selections that she selected  
21 and gave you, how do you know that she didn't give you  
22 pages from some other textbook, some textbook that's  
23 completely inapplicable or out of print? You don't, do  
24 you?

25 A. No.

1           Q.    I want to touch on the Google Books' issue.  
2           Can you tell us -- actually, let me ask you to kind of  
3           speed this up. There's a term of art in your field,  
4           copyright law, called "transformative," right?

5           A.    That's correct.

6           Q.    Okay. And if a work is transformative, then  
7           essentially that's one of the factors. If you take a  
8           copyrighted material and you transform it into something  
9           that has independent indicia of creativity, then it's  
10          transformative and generally not considered a violation,  
11          right?

12          A.    Yes.

13          Q.    So, you've referred to this case, a case that  
14          Mr. Montoya has repeatedly asked you about and cited to,  
15          and I just want to read you a section. It says -- from  
16          the case: "Similarly, Google Books is also

17                  transformative in the sense that it transforms  
18                  book text data into data for purposes of  
19                  substantive research."

20          Given that you haven't even reviewed everything  
21          that Dr. Martinez did or the sources, you don't have any  
22          basis to testify whether or not her work was  
23          transformative, do you?

24          A.    I have my understanding of how the notes were  
25          used.

1 Q. Based on her self-selected pages that she gave  
2 you?

3 A. Yes.

4 Q. And based on -- based on materials and books  
5 that you don't even remember here today?

6 A. That's correct.

7 Q. Now, you said earlier that equations -- or,  
8 what was it? Natural law? I don't remember. I don't  
9 want to use. I'm not remembering.

10 You said equations and you gave some sort of  
11 example of what you called equations, such as the  
12 Pythagorean Theorem?

13 A. Yes.

14 Q. And Pythagorean Theorem, if I remember  
15 correctly from geometry, isn't that the finding of  
16 hypotenuse of a right angle: A squared plus B squared  
17 equals C squared and C squared plus --

18 A. Yes.

19 Q. You don't really think that MCCCC is claiming  
20 that that's the manner in which she violated copyright,  
21 do you?

22 Is that your understanding? Because it's very  
23 important if that's your understanding.

24 CHAIRPERSON CRUDUP: That's time.

25 MR. UPPAL: I would ask for him to answer that

1 last question.

2 MR. MONTTOYA: Can I also do my redirect?

3 CHAIRPERSON CRUDUP: Yes, you can.

4 MR. MONTTOYA: Thank you.

5 THE WITNESS: Here's the way I would put it in  
6 my understanding of the situation: As I said, the Fair  
7 Use Doctrine is not capable of definitive analysis. We  
8 have -- even the factors that are laid out, the statute  
9 itself specifies that other factors can come into play.  
10 You have to look at it in light of the purpose.

11 Let's take the two extremes on -- on one  
12 extreme, let's say a math professor selects problems,  
13 copies them literally from a variety of textbooks and  
14 assembles in her own fashion into some kind of lecture.  
15 In that situation, that would be a degree -- that would  
16 be transformative and that would be fair use.

17 On the other extreme we have a math professor  
18 who takes a textbook and literally just copies -- copies  
19 it substantially, maybe entirely, and provides that to  
20 the students. That's not fair use.

21 The analysis is where in that spectrum does  
22 this situation fall. Mr. Garrison's opinion is, well,  
23 it falls in a spectrum that increases risks; but that in  
24 and of itself doesn't tell us, would that be ruled fair  
25 use by a judge fully informed of the facts.

1 I'm talking about the two extremes. I am  
2 relying on the information that I was provided and in my  
3 opinion it falls within the parameters of fair use  
4 because it seems similar in my understanding to the  
5 first hypothetical that I gave you and not the second.

6 MR. UPPAL: I didn't interrupt to the witness,  
7 but I want to point out that what he said is completely  
8 non-responsive to the question. I understand that you  
9 ruled that I'm out of time. Thank you.

10  
11 REDIRECT EXAMINATION

12  
13 BY MR. MONTOYA:

14 Q. Okay. I have a follow up. You say you use  
15 Google Books?

16 A. Yes.

17 Q. Have you ever heard of Toni Morrison, the Nobel  
18 Laureate, wrote this book called "Beloved"?

19 A. Yes.

20 Q. I'm showing you -- see Google Books up there?

21 A. Uh-huh.

22 Q. Okay. It's a literary work and consequently  
23 unique unlike a mathematical principle, correct?

24 A. Yes.

25 Q. Do you see how Google Books that the Judge

1 ruled was a fair use goes on page after page of verbatim  
2 copying?

3 A. Yes.

4 Q. Now, it's your understanding that the Google  
5 opinion said that that was fair use?

6 A. Yes.

7 Q. And remember when Mr. Uppal was saying: Oh, in  
8 your letter you made a mistake which you called a  
9 misunderstanding, that you thought that Professor  
10 Martinez required her students to purchase the  
11 underlying textbook that she copied from?

12 A. I think what I meant by required is that is the  
13 assigned book, it doesn't mean necessarily the students  
14 would purchase it.

15 Q. But isn't it true that under the Fair Use  
16 Doctrine, you don't have to buy the book?

17 A. (No audible response.)

18 Q. Is that a yes?

19 A. Yes.

20 Q. So, whether or not the book was assigned or not  
21 assigned, required or not required, is irrelevant for  
22 fair use purposes, correct?

23 A. I -- I wouldn't say --

24 MR. UPPAL: I would like that question --  
25 that's a very important question. I want that question

1 reread because I want to make sure I heard it. I just  
2 want the question reread by the court reporter.

3 MR. MONTOKYA: Well, that's something that you  
4 have to ask the Chair and the Chair has to rule on.

5 CHAIRPERSON CRUDUP: Sure.

6 MR. UPPAL: Thank you, Mr. Chair.

7 (Whereupon the prior Question was read.)

8

9 THE WITNESS: I wouldn't say -- I wouldn't  
10 chose the word "irrelevant."

11 Q. BY MR. MONTOKYA: Is it dispositive?

12 A. It is not dispositive.

13 Q. So, something can fall under the Fair Use  
14 Doctrine even though you don't require your students to  
15 buy it?

16 A. That's correct.

17 Q. In fact, one of the purposes of the Fair Use  
18 Doctrine is so you don't have to buy it, right? You can  
19 just make multiple copies of it to pass out in class  
20 like the statute itself says; is that correct?

21 A. Yes.

22 Q. And that's what Professor Martinez did, right?

23 A. That's my understanding, yes.

24 Q. Now, you weren't paid \$10,000 to write --

25 MR. UPPAL: Objection. Objection. We've been

1 over this. I mean --

2 MR. MONTOYA: Well, he's the one --

3 MR. UPPAL: No. Actually, I did not receive  
4 equal time and now we're going over exact time.

5 MR. MONTOYA: I had extra time. I had extra  
6 time.

7 DR. REYES: It will cut into the closing  
8 statement time. So, as you wish.

9 MR. MONTOYA: Then I will thank Mr. Bellamy for  
10 his insight and his honesty and release him.

11 THE WITNESS: Okay.

12 MR. MONTOYA: Thank you, sir.

13 THE WITNESS: Thank you.

14 MR. UPPAL: Nice to meet you.

15 CHAIRPERSON CRUDUP: Five minutes each for  
16 closing statement.

17 MR. MONTOYA: Bye, Fred. Thank you, sir.

18 MR. UPPAL: I have very bad allergies. Can you  
19 indulge me for 30 seconds?

20 MR. MONTOYA: And can I -- I'm going to go  
21 release my other witnesses. In fact, I'm going -- I'm  
22 still on the -- I'm going to actually invite him to come  
23 in. Is that okay? Because he's no longer a witness.

24 CHAIRPERSON CRUDUP: That's fine.

25 MR. MONTOYA: Thank you.

1 (Whereupon a recess is taken at 4:47 p.m. until  
2 4:49 p.m.)

3  
4 MR. UPPAL: Mr. Chairperson, five minutes each  
5 for closing, is that the rule?

6 CHAIRPERSON CRUDUP: Five. Five-minutes.

7 MR. MONTOKYA: How about ten? Since it's her  
8 career at stake.

9 DR. REYES: If you all want to stay later.

10 CHAIRPERSON CRUDUP: If you want ten -- we have  
11 to stay later. Do you want ten?

12 MR. MONTOKYA: We want 10.

13 CHAIRPERSON CRUDUP: Ten okay with you?

14 MR. UPPAL: I will stick to ten.

15 CHAIRPERSON CRUDUP: Okay.

16 MR. UPPAL: But I do believe -- actually, I'm  
17 going to ask Mr. Calderon. Traditionally, I think my  
18 side gets to open and close.

19 MR. CALDERON: You have ten minutes. I would  
20 recommend, but it's up to you if you want to reserve a  
21 couple of minutes --

22 MR. UPPAL: That's exactly what I want to do.

23 MR. CALDERON: -- for final rebuttal, that's  
24 fine.

25 He'll use eight up front; Mr. Montoya will use

1 his ten; and he'll be limited to two.

2 MR. UPPAL: Bear with me. I'm just going to  
3 start a stopwatch here.

4 So, Members of the Committee, what I'm going to  
5 do is I'm going to reserve, as is customary a portion of  
6 my time, if I use seven, I'll use the balance of the  
7 three at the end or whatever might be the case.

8 All right. Members of the Committee, thank  
9 you. It's been a long day and you've been very patient  
10 with both of us. And I'll just say to you that this is  
11 important to both sides. There's really no dispute as  
12 to that, we're not contending this matter isn't  
13 important to Dr. Martinez.

14 But what I would say to you is what you have to  
15 realize is that this is a situation that has gone on for  
16 a very, very long time and it has reached a point -- a  
17 breaking point, basically the straw that broke the  
18 camel's back, it is not a matter of one thing, it is the  
19 cumulation of everything that has resulted in a  
20 situation where the President of Phoenix College, who at  
21 the end of the day has to bear the responsibility and  
22 the risk for continuing to employ an individual such as  
23 Dr. Martinez.

24 We're at the point where President Solley is  
25 saying to you that she simply has lost trust in this

1 witness's ability to comply with her directives, to  
2 comply with the law, to comply with the District's  
3 policies. And she is concerned that the continued  
4 employment of Dr. Martinez and the views that Dr.  
5 Martinez holds is going to result in a situation where  
6 we're going to have massive problems, either with  
7 respect to a violation of copyright, a copyright  
8 infringement lawsuit, which I will say to you is not  
9 just a theoretical or hypothetical concern, but the  
10 District has been sued for this in the past, and you  
11 heard about that; or, it's going to reach a situation  
12 where students are going to have big complaints and have  
13 legitimate, very big problems with actions that Dr.  
14 Martinez takes such as simply violating the  
15 cash-handling rule.

16 So, I want to begin sort of in reverse order  
17 and talk about the cash-handling rule first, because it  
18 surely is the straw that broke the camel's back, in  
19 addition to everything that Dr. Martinez did in respect  
20 to copyright violations, that has led us to a situation  
21 here today where the President of the college who --  
22 let's face it, we all have better things to do with our  
23 time, has spent the entire day in front of you, and  
24 during her testimony requested or practically begged the  
25 Committee to support her recommendation to give or

1 return a recommendation of termination with respect to  
2 Dr. Martinez. And that request is not made lightly.

3 Let's review for a minute what happened. Dr.  
4 Martinez is already on restriction for copyright  
5 violations, she's already been disciplined with respect  
6 to her attempts to circumvent those copyright  
7 restrictions, and then it culminates in a situation  
8 because she does not want to comply with Phoenix  
9 College's directive that she submit her materials for  
10 pre-review in order to make sure they are not copyright  
11 violations in whatever she's using, she doesn't want to  
12 do that, so she goes to Staples and makes copies.  
13 That's bad enough. But then she takes those copies and  
14 sells them to her students.

15 We haven't claimed that she made a profit from  
16 that but that's not the issue. When you're an  
17 instructor, common sense should tell you that you don't  
18 get to sell lottery tickets, you don't get to sell  
19 Tupperware, you don't get to sell Girl Scout cookies,  
20 and you don't get to sell course materials to your  
21 students. Because if you even offer them for sale, the  
22 students are going to think that they have to buy them,  
23 either to curry favor to the instructor or to avoid a  
24 detriment.

25 So, when this issue is brought to Dr.

1 Martinez's attention, once again Dr. Solley takes time  
2 out of her schedule, she's got bigger fish to fry and  
3 more important things to do, a larger admission to  
4 service, but she takes time out of her schedule to meet  
5 with Dr. Kakar to explain the enormity of this violation  
6 and it's significance. What does Dr. Martinez do? She  
7 walked out. And she claims she walked out because she's  
8 afraid of Dr. Solley, but apparently not so afraid to  
9 comply with her directive.

10 Let's face the facts. She did not want to  
11 comply with a directive, a written directive of the  
12 President of Phoenix College and she simply thought that  
13 she could avoid it. Only today when she's had to face  
14 the results of cross-examination does she belatedly  
15 admit to you that she has made a mistake. But it's too  
16 late, the bond of trust has been broken.

17 And if you allow her to continue to be employed  
18 with the District, she will simply engage in this kind  
19 of behavior over and over. She already has and she will  
20 feel that she has gotten away with it; and it is  
21 impermissible.

22 But, let's continue. They try to counsel her,  
23 it doesn't work, she walks out. They tell her to  
24 contact the students and give refunds, she doesn't  
25 contact the students. So then because this is such a

1       serious violation, Kelly Loucks, a secretary in the Math  
2       Department is charged with -- look at the amount of time  
3       that's being wasted here -- to go out to students and  
4       see if she's contacted them to offer a refund. It's  
5       clear as day, she hasn't done so.

6               What happens next? She's told: Give refunds.  
7       She doesn't do it. So a student says: You're supposed  
8       to give me a refund. She still doesn't do so and tries  
9       to make it contingent on return of materials. That is  
10      ridiculous. She's already been told you have to make a  
11      refund and she tries to make it contingent on the return  
12      of the materials.

13             But the coup de gras, is when these  
14      instructions are repeatedly violated, she's issued a  
15      specific instruction in writing that now you have got to  
16      show cancelled checks. Because, frankly, at this point  
17      it doesn't matter whether you agree with the instruction  
18      or not, because management and the President of the  
19      college, a woman who has dedicated her life to  
20      education, who herself is Hispanic, who herself has won  
21      many awards has decided this is unacceptable behavior.  
22      Now, you've got to come forward with cancelled checks.  
23      And where are they? She doesn't produce a single one.

24             She violates the directive. And if she can  
25      violate that directive of a president that she told you

1 she was afraid of, then you really need to assess her  
2 credibility and where it relies. There is no  
3 credibility. It's unfortunate that we have to say  
4 things, but that's where we're at.

5 Now, with respect to the copyright issues, what  
6 I would say to you is this: That the other side has  
7 really strived to try and create the impression by this  
8 expert Mr. Bellamy, who is a nice fellow, I've got  
9 nothing wrong with him and I told you I don't challenge  
10 his credentials, but he testified that what she did was  
11 somehow fair use. Ladies and gentlemen, that has  
12 absolutely no indicia of credibility. Not because Mr.  
13 Bellamy is a bad guy or I don't think that he knows what  
14 he's doing, because he didn't even review the same  
15 materials that Mr. Garrison reviewed. He doesn't even  
16 remember what he reviewed.

17 And the only things that he reviewed to try and  
18 see how much or what Dr. Martinez copied comes from the  
19 self-selected pages that Dr. Martinez gave him. He  
20 admitted, he doesn't know what she gave him, it could  
21 have been something completely out of print. It  
22 certainly wasn't this, we know that. Because these  
23 books he doesn't remember reviewing.

24 So, ladies and gentlemen, he doesn't have the  
25 ability to tell you in any reliable manner that what Dr.

1        Martinez did is fair use or anything of the kind. And  
2        he also has no basis to testify that what she did  
3        constitutes fair use, because fair use doesn't require  
4        you to buy the textbook. That's not the issue. The  
5        issue is how much material did you infringe and he  
6        doesn't know.

7                I'm going to reserve whatever few seconds I  
8        have until the end.

9                DR. REYES: That will be the two minutes at the  
10       end.

11               MR. UPPAL: Thank you.

12               MR. MONTOYA: Your lawyer will tell you that  
13       the District has the burden of proof. My client is  
14       presumed innocent. They have to show that she's guilty.  
15       They haven't shown she's guilty of anything.

16               Let's start with the back end first because the  
17       back end is easy. Remember when I asked all of their  
18       witnesses that had anything relevant to say regarding  
19       the matter -- Dr. Kakar, President Solley -- you're  
20       saying she violated the District money-handling rules,  
21       what do those rules say? Well, first of all, what is  
22       the number of the rule? I don't know. What does the  
23       rule say? I don't know.

24               The President of Phoenix College, with all due  
25       respect, is not a dictator. She can't go around telling

1 people to give their money to students without citing a  
2 rule, without having authority behind her. She's not --  
3 we don't live in a totalitarian state. Remember, the  
4 nature of your job. You're members of a Faculty Senate.  
5 Universities, colleges started as guilds of scholars  
6 that would charge their students for their services and  
7 the guilds and delete could also expel scholars who did  
8 not adhere to the guilds' standards.

9 The Faculty Senate is higher than the  
10 President, that's why it's your recommendation that goes  
11 to first the Chancellor and then goes to the Governing  
12 Board. The President is not a dictator. She can't tell  
13 Cleopatria Martinez to give money away without a rule.

14 And -- and let's look at the evidence, there is  
15 no rule. No one testified about a rule. Professor  
16 Martinez testified it was reimbursement and it made  
17 sense. They keep on saying that she had to -- these  
18 students had to buy these materials. That's not true.  
19 The only evidence is is that they could have copied  
20 themselves, which they chose not to do, or have her copy  
21 them and reimburse them. So what? Big deal. She  
22 didn't obey. She didn't have to obey. This is not a  
23 dictatorship. This is based upon rules. That's why we  
24 have the RFPs. That's why we have the Faculty Senate to  
25 preserve faculty freedom.

1           So, they haven't proven -- so, not only have  
2           they not proven, the selling the improper money-handling  
3           case with the preponderance of the evidence, in fact,  
4           there's no evidence to support it at all.

5           Let's talk about the copyright case. First of  
6           all, the evidence is completely uncontradicted that the  
7           alleged copyright violations transpired almost four  
8           years ago; spring of 2010. And it never happened again.  
9           But, yet, they say she can't be trusted, she hasn't  
10          learned her lesson.

11          She testified over and over again: I've never  
12          used these materials again. Remember that? Never used  
13          these materials again. Why? Because they told me not  
14          to.

15          That is old news. She's been punished for it.  
16          She was given a letter of reprimand for it. She can't  
17          be punished again for it. Why fire her for a problem  
18          that transpired almost four years ago that she never  
19          even repeated.

20          One thing my friend Mr. Uppal completely  
21          ignored is the rest of the story. He focuses upon  
22          alleged mistakes of the spring of 2010, but what about  
23          the 28 years? What about those? Those have to be taken  
24          into consideration. You all know the concept of tenure  
25          is based upon longevity of service, longevity of

1 dedicated and excellence service to the college. She's  
2 tenured. That's why we're here. The university's rules  
3 respect longevity of service but, yet, there's never  
4 been any type of recognition of that.

5 And you heard: Oh, she's done this, she's done  
6 that. They're beating up on this poor lady, which is  
7 pure bullydom by the bunch of bureaucrats that President  
8 Solley has rubber stamped. That happens all the time.

9 Boy, are you right, Pavneet, President Solley  
10 is super busy, she does have a lot on her plate, and  
11 sometimes that results in the President rubber stamping  
12 what an underlying administrator, bureaucrat does, and  
13 that's why you are here to reverse it.

14 The foundation of any legal doctrine is the  
15 dang written law. Notice how no one has ever talked to  
16 you about that. Their expert didn't even cite to you  
17 the statutes. Pavneet didn't cite to you the statutes.  
18 They don't want you to read the statute. The statutes  
19 reads: "The fair use of copyrighted work for

20 purpose such as criticism, comment, news  
21 reporting, teaching (including multiple copies  
22 for classroom use), scholarship, or research  
23 is not an infringement of copyright."

24 That's what the dang statute itself says.

25 We've gone over and over again the Google case.

1 If Google can do it for money, copy a whole dang book or  
2 90 percent of a book, why can't she do it for no money  
3 and not a whole book but a fraction of it, the vast  
4 majority of which is mathematical principles in any  
5 event? Why doesn't that fall into fair use?

6 Bellamy is exactly right. Now, did he have the  
7 huge expert report that Mr. Garrison did? No, but he  
8 wasn't paid \$10,000 to produce one because she couldn't  
9 afford it. He did it out of the kindness of his heart.  
10 He was more objective than anyone.

11 It absolutely was fair use. Look at the  
12 language of the statute.

13 And another thing that is irrational, I  
14 challenge you to address this issue that this  
15 demonstrates the irrationality of what we're here for,  
16 and that is this: Why haven't they said, well, you  
17 know, if you don't want to terminate her, here's another  
18 sanction. You know, whenever you watch TV, whenever you  
19 discipline your kids, whenever anything -- whenever any  
20 question of discipline is -- is involved, you always  
21 look at the level of discipline to make sure that it's  
22 proportionate to the underlying offense.

23 There's been no talk of that. She must be  
24 fired. Why hasn't she already been punished enough? My  
25 God, she's been excoriated, she's been humiliated, she's

1       been put on administrative leave. After 28 years of  
2       dedicated service to the College, why isn't that enough?  
3       The level of punishment betrays what's going on here.  
4       This is unfair.

5               And, moreover, whenever you consider  
6       punishment, you also have to consider another concept,  
7       because, guess what, we're humans, and that's the  
8       concept of mercy. Why doesn't this individual deserve  
9       mercy? Everyone deserves mercy. Everyone absolutely  
10      deserves mercy, especially when they have been a  
11      merciful person. There's been no demonstration that  
12      this individual is mean spirited or malicious. She  
13      didn't steal -- even though they said she stole, there's  
14      no evidence that she stole. There's no evidence that  
15      she lied. There's no evidence that she cheated, even  
16      though they tried to say that she cheated. Oh, you  
17      know, she got an assistant faculty member to print  
18      something. Oh, she printed up, you know, 14 [sic]  
19      copies of classroom materials. There's been no evidence  
20      of any malice on her part.

21             The punishment is disproportionate even without  
22      the concept of mercy. When you apply the concept of  
23      mercy, there's absolutely no question that she shouldn't  
24      be terminated.

25             And, moreover, they haven't proven their case.

1       They haven't proven that she's violated any rule  
2       regarding handling money and they haven't proved that  
3       she's violated the copyright law. Exhibit No. 1 is the  
4       Copyright Act itself, Section 107. Exhibit No. 2 is the  
5       Google case. How can Google make money on printing  
6       90 percent of Toni Morrison's original literary master  
7       piece "Beloved," and her use of the limited problems  
8       that she used, less than .5 percent -- that testimony  
9       has been uncontradicted by the way. Evidence .5 percent  
10      or less. That's what the evidence shows. When I asked  
11      Mr. Garrison: How much did she use? I don't know, that  
12      wasn't important to me. Even though he was paid \$10,000  
13      to review the facts, he didn't review that fact.

14               There isn't a case here. This is a trumped-up  
15      case and they're trying to destroy someone who doesn't  
16      deserve to be destroyed. I would be afraid, too. I  
17      think that you saw -- you sensed the fear in her when  
18      she testified. Did you not? Can you deny that she was  
19      shaking, that she was fearful, that she was berated.

20               CHAIRPERSON CRUDUP: Okay. Thank you.

21               MR. MONTROYA: Thank you.

22               MR. UPPAL: Ladies and gentlemen of the  
23      Committee, the concept of tenure will not survive if an  
24      individual such as Dr. Martinez is allowed to violate  
25      written instructions from a college president and engage

1 in this kind of behavior.

2 Dr. Solley is not a dictator. There's a rule  
3 that you can't sell material. There's a real good  
4 reason for it, and Mr. Montoya keeps stating that the  
5 rule was never cited to you. It's in the Statement of  
6 Charges, remember the one he objected to when I tried to  
7 show it to the witness that was being questioned?

8 It says, Faculty Policy Manual 3.2.4:

9 "An instructor shall not have any financial  
10 interest in or receive compensation from the  
11 sale of any unpublished instructional materials  
12 required or suggested for a class that the  
13 instructor teaches."

14 With respect to why there isn't a sanction less  
15 than termination, and you heard Mr. Montoya make an  
16 appeal to mercy, review the record. Look at how many  
17 times Dr. Solley and the Administration tried to counsel  
18 this individual. Look at the copyright issues, she  
19 wasn't immediately fired on it, maybe she should have  
20 been, but they tried to work with her. She repeatedly  
21 circumvented it. I can't take you through the examples,  
22 but I know that you know them. Look at the issues of  
23 the Cash-Handling Policy, look at how many times she  
24 violated it. And then she -- as she sat here today,  
25 refused and failed to produce the cancelled checks and

1 the refunds that she was directed to send. That didn't  
2 happen. The very first time, they tried to talk to her,  
3 she walked out.

4 Mercy and sanctions short of termination have  
5 been utterly exhausted. There is no other option at  
6 this point. And I know that, you know, you're going to  
7 review the fact that she is tenured and she's worked  
8 here a long time, but she's had every opportunity.

9 Again I leave you with this: The concept of  
10 tenure will not survive and MCCCCD will not survive as an  
11 institution if individuals such as this are allowed to  
12 engage in this level of conduct and retain their  
13 employment.

14 CHAIRPERSON CRUDUP: Thank you.

15 MR. CALDERON: Mr. Chairman, before you  
16 adjourn, may I ask a question and then offer up some  
17 deadlines?

18 CHAIRPERSON CRUDUP: Yes, you may.

19 MR. CALDERON: Thank you, Mr. Chairman.

20 Question to both counsel, is it the argument  
21 today that the Committee can only rule, it's an all or  
22 nothing? There's recommendation for termination and  
23 there's a recommendation for no termination? There can  
24 be no recommendation for less than termination?

25 MR. UPPAL: That's my understanding -- let's,

1       since I represent the District and since you were  
2       turning to me.

3               MR. CALDERON:   Sure.

4               MR. UPPAL:   Our position is that you have to  
5       respond to the charges, and the charges are a  
6       recommendation -- are requesting a recommendation of  
7       termination. Anything short of that is not going to  
8       address either the charges or the purposes that we've  
9       been here for today.

10              MR. CALDERON:   Mr. Montoya?

11              MR. MONTOYA:   This Committee has the  
12       jurisdiction to recommend a lesser sanction, that is  
13       certainly within your jurisdiction. The Governing  
14       Board -- first of all, it's only a recommendation, and  
15       ask Mr. Calderon or anyone who sat in on the Governing  
16       Board's open meetings, they can do whatever they want.  
17       They don't have to terminate, they can suspend, they can  
18       reinstate. I know, I got an employee reinstated.

19              The Governing Board absolutely can do that.  
20       You can absolutely do that, too. You have the -- you  
21       have the power to make that recommendation. That is  
22       your absolute right.

23              MR. CALDERON:   Question for Mr. Uppal, the  
24       August 9th letter signed by Chancellor Glasper, second  
25       paragraph says that Regulation 6.7 says the violation of

1 any of its employment standards, quote, "constitute  
2 ground for disciplinary action, up to and  
3 including termination of any Maricopa Community  
4 College District employee," blah, blah, blah.

5 MR. UPPAL: Right.

6 MR. CALDERON: It says "up to and including."

7 MR. UPPAL: The reason that is -- and we can  
8 have Chancellor Glasper address this if there's any  
9 doubt in the Committee's mind. The reason that that  
10 verbiage is used, is that's the verbiage that's  
11 basically used in employment manuals as well as faculty  
12 policies, but what you are being charged with is to make  
13 your recommendation to the Board with respect to -- you  
14 can look at the letter for yourself, Dr. Glasper is  
15 supporting termination. There is no doubt about this.

16 MR. CALDERON: Thank you.

17 Mr. Chairman, with your permission, this is to  
18 remind the parties -- and we're still on the record --  
19 that the Proposed Findings of Fact and Conclusions of  
20 Law are due on November 25th, and that this Hearing  
21 Committee will render its decision no later than  
22 December 9th. Any questions?

23 I see --

24 MR. UPPAL: So, the Committee would like our  
25 Proposed Findings of Fact and Conclusions of Law to

1 assist it in arriving at a decision?

2 MR. CALDERON: Yes.

3 MR. UPPAL: Okay. Okay.

4 MR. MONTROYA: I have a request. I'm leaving  
5 out of town, out of state on business on the 22nd. Can  
6 we agree we find the findings via e-mail on the 27th?  
7 Would you object to that, Pavneet?

8 MR. UPPAL: When does Thanksgiving fall?

9 MR. MONTROYA: I don't know. It guess it falls  
10 on the 28th.

11 MR. UPPAL: Steve, I don't -- I tend to  
12 stipulate but that one doesn't seem real workable to me.

13 MR. MONTROYA: Do you have another date that you  
14 would stipulate to?

15 MR. UPPAL: It's been a long day and I don't  
16 have -- I'm having trouble pulling up my schedule. I  
17 don't think -- it's not that I'm not willing to  
18 stipulate. It's just that is Thanksgiving. It's not  
19 going to accomplish to --

20 MR. CALDERON: That's it, too. We don't want  
21 to put Taylor in a position to having to work on  
22 Thanksgiving day.

23 Why don't we do this, for the remainder of  
24 today, the November 25th deadline will stand; however,  
25 if both counsel get together and they want to stipulate

1 to something, let us know and I'll ask the Chairman or  
2 the Committee to accommodate them if we can. I just  
3 don't want to put the Committee in a situation where  
4 they only have a week or less than that.

5 MR. MONTOYA: Neither do I. And we would also  
6 stipulate the Committee have a corresponding extension  
7 to do it's work, of course.

8 MR. UPPAL: Well, but the Committee -- doesn't  
9 the Committee's request have to be made in line with a  
10 scheduled Board meeting, like in advance of the Board  
11 meeting?

12 MR. MONTOYA: I don't think there's going to be  
13 a Board meeting for awhile.

14 MR. CALDERON: We know nothing about a Board  
15 meeting. Nobody has given us any time tables for that.

16 MR. MONTOYA: There has to be a quorum, too.

17 MR. UPPAL: Maybe the -- I don't know. What I  
18 was thinking was that the reason the decision has to be  
19 rendered by a date certain is because it has to be so  
20 many days in advance.

21 MR. CALDERON: We came up with that date. We  
22 pulled it out of thin air because based on the schedule  
23 we're trying to give this time.

24 MR. UPPAL: I would ask this of the Committee  
25 -- this isn't my request. I'm trying to accommodate

1       opposing counsel. How many days in advance of  
2       December 9th would you realistically need the Proposed  
3       Findings of Fact and Conclusions of Law in order for you  
4       to really be able to read them and digest them and  
5       assist you in your decision?

6               MR. CALDERON: I would suggest ten days. I  
7       would suggest ten days in advance. And the reason I  
8       suggest that is that is once you give us direction, what  
9       we will do is we will take a look at both Findings of  
10      Fact and Conclusions of Law and try to distil out the  
11      salient parts that are consistent with your direction  
12      and give you a draft, a third version, which would be  
13      yours to tear apart. And so I -- you know, I don't want  
14      to rush you on this. That's why I would suggest that.

15              CHAIRPERSON CRUDUP: Ten days.

16              MR. UPPAL: Mr. Calderon, here's what I was  
17      concerned with, and maybe we should just leave this for  
18      another time and stick with November 25th. I'm looking  
19      at the rules, looks like it has a deadline: "Within  
20      five working days after completion of the hearing, the  
21      Committee shall provide the Chancellor," et cetera, et  
22      cetera.

23              CHAIRPERSON CRUDUP: Unless stipulated to  
24      something else.

25              MR. CALDERON: We stipulated. All the parties

1 stipulated to the timetable.

2 MR. MONTOKA: See, my understanding is that  
3 because it's Dr. Martinez's job that's at stake, she has  
4 the right to relax those deadlines which she's already  
5 done at least on one occasion already.

6 MR. CALDERON: Mr. Chairman, the party that  
7 would be prejudiced by not adhering to the five-day rule  
8 is Dr. Martinez and she, through counsel, has agreed to  
9 stipulate to that. So -- so, there's no harm, no foul.

10 MR. UPPAL: Hold on one second, Mr. Calderon.  
11 I'm not disputing what you're saying. I'm just going to  
12 request that you read the rules because the rules --

13 MR. CALDERON: We've read the rule.

14 MR. UPPAL: Well, here's the problem: The rule  
15 in front of it says "unless the parties otherwise  
16 agree"; the rule after it does not have that statement.

17 Just want to show it to you.

18 MR. CALDERON: Well, then, if that's the case,  
19 we would ask the parties to get us the Proposed  
20 Conclusions of Law and Findings of Fact by tomorrow  
21 morning at 8 o'clock in the morning.

22 MR. MONTOKA: Well, that's also true, but can I  
23 say something, Mr. Calderon?

24 MR. CALDERON: Yes, please.

25 MR. MONTOKA: On the record, when a party says

1 "I waive that objection" on the record, I think that Mr.  
2 Calderon will verify and Mr. Uppal will verify that they  
3 cannot take that back. That that is binding.

4 MR. UPPAL: I agree with that. But I -- my  
5 question to the Committee still holds. You have  
6 Thanksgiving in the middle of it, so by when do you need  
7 those Proposed Findings of Fact and Conclusions of Law  
8 in order to assist you to reasonably reaching your  
9 conclusion?

10 I'm not opposing an extension, but if it really  
11 is ten days, then we don't really have -- and then  
12 Thanksgiving is coming up, we don't have much to work  
13 with. That's the only thing we're saying.

14 CHAIRPERSON CRUDUP: That's what you're  
15 describing, would6delete how many days would you guys  
16 apparently need? Five days?

17 MR. UPPAL: We'll get it to you by the 25th.  
18 We're ready to comply with the 25th, the other side is  
19 asking for the extension. I'm not opposing the  
20 extension request, I just want -- this requires a  
21 significant amount of work. It's important to you, too.

22 So my question to you is, I'm willing to  
23 stipulate and give the other side an extension giving  
24 his on-the-record waiver of any objection to timeliness.  
25 Now it falls on you, how much time in advance do you

1 want it?

2 MR. CALDERON: Mr. Chairman, before you answer  
3 that -- and we're on the record -- Rule 3.15.7 states as  
4 the five-day working rule: "The above deadline may be  
5 extended up to 15 working days after completion  
6 of the hearing if the Hearing Committee  
7 requests briefs and/or recommended Findings of  
8 Fact and Conclusions of Law from the parties."  
9 And that's precisely what the Committee is  
10 asking; along with it, there's a stipulation. So, it is  
11 what it is. Thank you, Mr. Chair.

12 MR. UPPAL: So, once again, falls on you. If  
13 you want to render you decision by December 9th -- this  
14 is the only thing I'm asking you. If you want to render  
15 you decision by December 9th, which is my understanding,  
16 by when do you want our briefs?

17 MR. CALDERON: Mr. Chairman, I recommend it  
18 remains November 25th unless the parties together can  
19 stipulate to some other date, because that factors in  
20 your final exams, your preparation for final, because  
21 you have another life other than this --

22 CHAIRPERSON CRUDUP: Right.

23 MR. CALDERON: -- that's why we come up with  
24 the timetable.

25 If you come up with another date, I'm certainly

1 going to recommend it to the Hearing Committee.

2 DR. REYES: Does that work for you?

3 MR. MONTOYA: Well, I would like to do it -- I  
4 would just like a couple more days because I fly out of  
5 state to do depositions. I have to be at the airport at  
6 5:00 a.m. on the 21st, so. And I can work -- I can work  
7 when I'm gone, but it's more difficult and I don't think  
8 anyone is going to be prejudiced if we do it on the 27th  
9 instead. It's not going to ruin anybody's Thanksgiving  
10 because that's the day before Thanksgiving. And the  
11 rule itself says when you -- when you require Findings  
12 of Fact and Conclusions of Law, that you can push  
13 everything off 15 days. So, I don't think there's any  
14 obstacle in the Committee extending the time a mere two  
15 days.

16 MR. CALDERON: Mr. Uppal, will the 27th be okay  
17 with you?

18 MR. UPPAL: Fortunately, we're not working that  
19 day. But here's what I think just as an accommodation  
20 to the other side is we'll try to submit our brief  
21 early. So, the -- so -- and I think Mr. Montoya would  
22 agree, so he doesn't have to tailor his brief to us, we  
23 won't serve it until he serves his. You can expect ours  
24 on the 25th and I would be okay with Mr. Montoya  
25 submitting his on the 27th.

1                   Would that be okay, Steve?

2                   MR. MONTOKA: That would be okay. Let me also  
3 say this, that customarily the party bearing the burden  
4 of proof does file their brief first.

5                   MR. UPPAL: This is argument.

6                   MR. CALDERON: I understand. What the Hearing  
7 Committee determined was they wanted simultaneous  
8 submissions rather than saying one set of findings is  
9 wrong and back and forth, the Committee wants to do that  
10 heavy lifting of discerning that.

11                   So, with that, Mr. Chairman, since we're on the  
12 record, the Phoenix College will have up to the 27th to  
13 -- to submit it's Findings of Fact and Conclusions of  
14 Law to the Committee through our office and it is -- it  
15 is recommended that you not serve it on the opposing  
16 counsel; we need to double-check it with my office that  
17 we don't inadvertently share it ahead of time; and Mr.  
18 Montoya you have up until the 27th to submit yours. On  
19 the night of the 27th, we'll make sure everybody has  
20 everything. And then that will give us time, once you  
21 give us direction, to try to prepare for you something  
22 that you can then deliberate about and tear it apart.

23                   We have no part of authorship for the first  
24 draft. The final draft will be precisely the way you  
25 want it to be.

1 MR. BELL: Are we going to extend their  
2 deadline two days?

3 MR. CALDERON: I'd leave it alone right now and  
4 the Committee can go ahead and do it if they run into a  
5 jam.

6 Is that fair, Counsel?

7 MR. UPPAL: I -- I think I just heard you say  
8 the date for Committee remains December 9th?

9 MR. CALDERON: Unless they get into a jam, then  
10 I'll contact you and say we're in a jam and we'd ask for  
11 two additional days.

12 MR. MONTOYA: And they have the right to take  
13 15 more days if they want.

14 MR. CALDERON: We don't want to hold anybody,  
15 Phoenix College or Dr. Martinez, hanging particularly  
16 with the holidays coming up. We want to make sure that  
17 the Committee gives you a just and speedy decision.

18 MR. UPPAL: Thank you.

19 MR. CALDERON: Thank you.

20 CHAIRPERSON CRUDUP: Is there something formal  
21 I should say?

22 Thank you all for coming.

23 MR. BELL: We are adjourned.

24 CHAIRPERSON CRUDUP: We're adjourned. Thanks.

25 (Whereupon the proceeding concludes at 5:25

1 p.m.)

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3 \* \* \* \* \*

4  
5 C E R T I F I C A T E

6  
7 I, Angela Furniss Miller, Certified Reporter,  
8 do hereby certify that the foregoing pages numbered 1  
9 through 340, inclusive, constitute a full and accurate  
10 printed record of my stenographic notes taken at said  
11 time and place, all done to the best of my skill and  
12 ability.

13 DATED, at Phoenix, this 27th day of November,  
14 2013.

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17 \_\_\_\_\_  
18 Angela Furniss Miller, RPR  
19 Certified Reporter (AZ50127)  
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